

1986 NO. 21

THE IMMIGRATION (GUERNSEY) (AMENDMENT) RULES 1986

Made..... 22nd JULY 1986 .....

Laid before the States.....

Coming into operation..... 23rd JULY 1986 .....

THE STATES BOARD OF ADMINISTRATION in exercise of the powers conferred upon it by sub-section (2) of Section Three of the Immigration Act 1971, as extended to the Bailiwick by the Immigration (Guernsey) Order 1972, as varied by the Immigration (Guernsey)(Variation) Order 1982, hereby makes the following Rules:-

Amendments to Rules of 1983.

- 1. The Immigration (Guernsey) Rules 1983 (a) are hereby amended as set out in Section One.

SECTION ONE

AMENDMENTS

- 2. The following shall be inserted at the end of Paragraph 2 of the said Rules.

"For the purposes of these Rules the term "public funds" means any benefit paid by the States of Guernsey to any person who has not paid any contribution towards the receipt of such benefit."

- 3. In paragraph 11 of the said Rules, after the words "The foreign nationals" in line 1, there shall be inserted "and Commonwealth citizens" and the second and third sentences shall be deleted.

- 4. The following paragraphs shall be substituted for paragraphs 12 and 13 of the said Rules:-

"12. Any other person who wishes to ascertain in advance whether he is eligible for admission to the Bailiwick, or who is seeking entry for a purpose for which prior entry clearance is required under these Rules, should apply in the country where he is living for the issue of an entry clearance. The person must be outside the common travel area at the time of his application which should be made to the nearest British High Commission, Embassy or Consulate.

13. Entry clearance takes the form of a visa, letter of consent (for non-visa foreign nationals) or an entry certificate (for non-visa Commonwealth citizens) and these are to be taken as evidence of the holder's eligibility for entry to the Bailiwick, and accordingly accepted as "entry clearances" within the meaning of the Act. Applications for entry clearance are to be considered in accordance with the provisions in these Rules governing the grant or refusal of leave to enter by an immigration officer and, where

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appropriate, the term "entry clearance officer" may be substituted for "immigration officer" accordingly. Applications are to be decided in the light of the circumstances existing at the time of the decision except that an applicant will not be refused an entry clearance under paragraphs 51 to 52 solely on account of his becoming over age between the receipt of his application and the date of the decision on it."

5. In paragraph 14 of the said Rules, for the words "paragraphs 51 or 52" there shall be substituted: "paragraphs 51 to 52".

6. In paragraph 16 of the said Rules, after the words "admission for settlement" in the last line there shall be inserted: "and spouses eligible for admission under paragraph 47."

7. The following shall be substituted for the final sentence of paragraph 24 of the said Rules:-

"Graduates from United Kingdom medical schools are admissible to undertake employment for up to 12 months, as required for full registration with the General Medical Council."

8. In paragraph 26 of the said Rules, the words "(as defined in paragraphs 49 - 51)" shall be deleted.

9. The following shall be inserted after paragraph 26 of the said Rules:-

"Doctors and dentists seeking post-graduate training.

26A. A doctor or dentist seeking entry to the Bailiwick of Guernsey for post-graduate training shall be admitted for an appropriate period not exceeding 12 months if he satisfies the immigration officer that he is eligible for full or limited registration with the General Medical Council or registration with the General Dental Council and that he intends to leave the Bailiwick of Guernsey on completion of his training period. If a passenger has previously spent time in the Bailiwick of Guernsey for the purpose of post-graduate training he may be admitted for a further period but the total aggregate period in the Bailiwick of Guernsey for this purpose should not exceed four years. The dependants of such doctors and dentists should be admitted on the same basis as the dependants of students (See Paragraph 26)."

10. In paragraph 28 of the said Rules, for "30 - 35" substitute "30 - 32, 34".

11. Paragraphs 33 and 35 of the said Rules shall be deleted.

12. In paragraph 41 of the said Rules, for "47 - 51" substitute "47 - 49 and 51".

13. The following paragraphs shall be substituted for paragraphs 42 - 45 of the said Rules:-

"Fiances and fiancées

42. A passenger seeking admission to the Bailiwick for marriage to a person present and settled in the Bailiwick or who is on the same occasion being admitted for settlement, and who intends to settle thereafter must hold a current entry clearance granted for that purpose. An entry clearance will be refused unless the entry clearance officer is satisfied:-

- (a) that it is not the primary purpose of the intended marriage to obtain admission to the Bailiwick; and
- (b) that there is an intention that the parties to the marriage should live together permanently as husband and wife; and
- (c) that the parties to the proposed marriage have met; and
- (d) that adequate maintenance and accommodation without recourse to public funds will be available for the applicant until the date of the marriage; and
- (e) (i) that there will thereafter be adequate accommodation for the parties and their dependants without recourse to public funds in accommodation of their own or which they occupy themselves; and  
(ii) that the parties will thereafter be able to maintain themselves and their dependants adequately without recourse to public funds.

43. A passenger holding an entry clearance issued under the preceding paragraph should, subject to paragraph 14, be admitted for 3 months and advised to apply to the Immigration and Nationality Department Guernsey once the marriage has taken place for an extension of stay. A prohibition on employment should be imposed."

14. In paragraph 46 of the said Rules, for the words "paragraph 47" there shall be substituted: "paragraph 49".

15. The following paragraphs shall be substituted for paragraphs 47 - 50 and paragraphs 55 - 56 of the said Rules:-

"Spouses

47. A passenger seeking admission to the Bailiwick as the spouse of a person who is present and settled\* in the Bailiwick, or who is on the same occasion being admitted for settlement, must hold a current entry clearance granted for that purpose. An entry clearance will be refused unless the entry clearance officer is satisfied:-

- (a) that the marriage was not entered into primarily to obtain admission to the Bailiwick; and
- (b) that each of the parties has the intention of living permanently with the other as his or her spouse; and
- (c) that the parties to the marriage have met; and
- (d) that there will be adequate accommodation for the parties and their dependants without recourse to public funds in accommodation of their own or which they occupy themselves; and

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(e) that the parties will be able to maintain themselves and their dependants adequately without recourse to public funds.

48. A passenger holding an entry clearance issued under the preceding paragraph should, subject to paragraph 14, be admitted for an initial period of up to 12 months.

Other relatives: general provisions

49. This paragraph and paragraphs 51 - 54 cover the admission under this Part of other relatives of a person who is present and settled in the Bailiwick or who is on the same occasion being admitted for settlement or given a limited leave with a view to settlement. A passenger seeking admission under paragraphs 51 - 54 must hold a current entry clearance granted for that purpose. An entry clearance will be refused unless the entry clearance officer is satisfied that there will be adequate accommodation for the applicant without recourse to public funds in accommodation which the person concerned owns or occupies himself and he is able and willing to maintain them adequately without recourse to public funds."

16. The following footnote shall be inserted to the new paragraph 47:-

" \*A member of H M Forces based in the United Kingdom but serving overseas should be regarded for this purpose as being settled in the Bailiwick."

17. In paragraph 51 of the said Rules, for the words "paragraphs 47 and 48" in the first sentence, there shall be substituted: "paragraph 49".

18. The following shall be inserted after paragraph 51 of the said Rules:-

"51A. If the requirements of paragraph 49 are satisfied, children under 18, provided that they are unmarried, are to be admitted for an initial period of up to 12 months:

(a) if one parent is settled in the Bailiwick or is on the same occasion admitted for settlement and the other is given limited leave with a view to settlement; or

(b) if they meet the requirements of sub-paragraphs (e) and (f) of paragraph 51 but for the fact that they are joining or accompanying one parent given limited leave with a view to settlement.

In this paragraph "parent" is as defined as in paragraph 51."

19. The following shall be substituted for the last sentence of paragraph 52 of the said Rules:-

"The requirements of paragraph 49 must be met in all cases."

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20. In paragraph 53 of the said Rules, for the words "paragraphs 47 and 48" in the first and last sentences, there shall be substituted: "paragraph 49".
21. In the first footnote to paragraph 68 of the said Rules, there shall be inserted after the words "nationals of Greece until 1988": "and to nationals of Portugal and Spain until 1993."
22. In paragraph 75 of the said Rules in sub-paragraph (b), the words "paragraph 55 (husbands)" shall be deleted.
23. In paragraph 75 of the said Rules, below the words "Paragraph 22 (Students)" there shall be inserted "26A (doctors and dentists seeking post-graduate training)";

and in sub-paragraph (a) of paragraph 75, for "32 (a), 33, 34 (a) or 35" substitute "32 (a) or 34 (a)".

24. The following paragraphs shall be substituted for paragraphs 92 - 95 of the said Rules:-

"General considerations

92. The provisions of this part of the Rules which provide for a person's leave to enter or remain to be varied, whether on application or otherwise, are subject to the provisions of paragraphs 93 to 95 which set out general grounds for curtailing leave or refusing an application for variation of leave and which apply to all cases falling to be dealt with in accordance with this Part.
93. A person's leave may be curtailed or an application for variation of leave refused if false representations have been made, or material facts not disclosed, in order to obtain leave to enter or a previous variation of leave: if the person has failed to comply with any conditions attached to his leave or has failed to maintain and accommodate himself and any dependants without recourse to public funds: if in the light of his character, conduct or associations it is undesirable to permit him to remain in the Bailiwick: or if he represents a danger to national security. A person's leave may also be curtailed if he ceases to meet the requirements of the Rules under which that leave was granted, or, if having come to the Bailiwick to work and having a work permit issued by the States Board of Administration that employment is terminated and the board does not approve him taking other employment.
94. An application for variation of leave may also be refused if the person has failed to honour any declaration or undertaking given orally or in writing as to the intended duration and purpose of his stay: if an applicant (other than a person who is eligible for settlement or who is the spouse of a person settled here) might not be returnable to another country if allowed to remain for the period for which he wishes to stay or if an applicant takes an unreasonable time to produce documents or other evidence required to establish his claim under the Rules. An applicant whose stay in the Bailiwick has been sponsored by The States of Guernsey, an international scholarship agency or by his home government should be required to show that the sponsoring authority is content for further leave to be granted.

95. Except as provided in paragraphs 119 and 128, an application to remain for a purpose for which an entry clearance is required under Section One of these Rules from a person who was not admitted with such an entry clearance is to be refused. An application to remain for any other purpose (other than employment for which a work permit is required) may be granted if the relevant requirements of these Rules are met. Except as provided in paragraph 109, an application to remain for employment for which a work permit is required under Section One of these Rules from a person who was not admitted with such a work permit is to be refused. This does not apply to a person who has been offered employment as a nurse or midwife on completion of training at a hospital in the Bailiwick, provided that the training was not financed by an international scholarship agency or by his home government."

25. The following shall be inserted at the end of paragraph 95 of the said Rules:-

"Applications from doctors and dentists who have been sponsored for training in the Bailiwick by the States of Guernsey, an international scholarship agency or by their home government shall be refused without reference to the States Board of Administration."

26. In paragraph 96 of the said Rules, the words "or 121" shall be deleted.

27. The following shall be substituted for the first sentence of paragraph 105 of the said Rules:-

"A graduate from a United Kingdom medical school may be given an extension of stay to undertake such employment for up to 12 months as is required for full registration with the General Medical Council."

28. The following shall be inserted after paragraph 105 of the said Rules:-

"Doctors and dentists in post-graduate training.

105A. A doctor or dentist should be given an extension of stay not exceeding 12 months for post-graduate training if he produces satisfactory evidence that he has limited or full registration with the General Medical Council or registration with the General Dental Council. An extension should be refused if there is reason to believe that the applicant does not intend to undergo post-graduate training and to leave the Bailiwick of Guernsey at the completion of his training period. Further extensions of stay may be granted on the same basis but the total aggregate period in the Bailiwick of Guernsey for this purpose should not exceed four years.

105B. Visitors and students may be granted extensions of stay for post-graduate medical or dental training if the requirements of the previous paragraph are met."

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29. In paragraph 111 of the said Rules, for the words "paragraph 47" there shall be substituted "paragraph 49".
30. In paragraph 112 of the said Rules, for the words "paragraph 47" there shall be substituted "paragraph 49": and for "paragraphs 32 - 35" substitute "paragraph 32 or 34".
31. In paragraph 112 of the said Rules, the words "except in the case of doctors registered with the General Medical Council who may be granted extensions of stay for up to 12 months" shall be deleted.
32. The following paragraphs shall be substituted for paragraphs 118 - 121 of the said Rules:-

"Marriage

118. Fiances and fiancees arriving with entry clearances for the purpose of marriage to a person settled here are normally admitted for 3 months. If the marriage does not take place within the initial 3 months, an extension of stay subject to a prohibition on employment is to be granted only if good cause is shown for the delay and there is satisfactory evidence that the marriage will take place at an early date and that the maintenance and accommodation requirements in paragraph 42 continue to be met. If the marriage does take place an application for extension of stay on the basis of the marriage is to be considered under paragraph 119.
119. Where a person with limited leave seeks an extension of stay on the basis of marriage to a person settled here, an extension will not be granted unless the Lieutenant Governor is satisfied:
  - (a) that the marriage was not entered into primarily to obtain settlement here; and
  - (b) that the parties to the marriage have met; and
  - (c) that the applicant has not remained in breach of the immigration laws; and
  - (d) that the marriage has not taken place after a decision has been made to deport him or he has been recommended for deportation or been given notice under section 6 (2) of the Immigration Act 1971 as extended; and
  - (e) that the marriage has not been terminated; and
  - (f) that each of the parties has the intention of living permanently with the other as his or her spouse; and
  - (g) that there will be adequate accommodation for the parties and their dependants without recourse to public funds in accommodation of their own or which they occupy themselves; and
  - (h) that the parties will be able to maintain themselves and their dependants adequately without recourse to public funds.

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When the Lieutenant-Governor is satisfied that all the conditions at (a) - (h) above apply, the applicant will be allowed to remain, for 12 months in the first instance.

120. A person who was admitted for a limited period, or given an extension of stay, as the spouse of a person settled here may have the time limit on their stay removed at the end of that period if the Lieutenant-Governor is satisfied that the marriage has not been terminated and that each of the parties has the intention of living permanently with the other as his or her spouse."
33. In paragraph 128 of the said Rules, for the words "paragraphs 47 - 54" there shall be substituted: "paragraphs 49 and 51 - 54"; and in sub-paragraph (b) delete ",33".
34. In paragraph 131 of the said Rules, for "32 (a), 33, 34 (a) or 35" substitute "32 (a) or 34 (a)".
35. The following shall be inserted at the end of the Appendix of the said Rules:-

CITIZENS OF COMMONWEALTH COUNTRIES WHO NEED VISAS FOR THE UNITED KINGDOM CHANNEL ISLANDS AND ISLE OF MAN.

Citizens of Sri Lanka (other than those to whom Paragraph 78 (a) applies).

## SECTION TWO

### TRANSITIONAL PROVISIONS AND SAVINGS

36. The changes to the Rules set out in Section One shall not apply to the following cases which shall continue to be decided under the provisions of the Immigration (Guernsey) Rules 1983 as originally enacted (such Rules as originally enacted being hereinafter referred to as "GSI 1983/24"):-
- (i) any application made on or before 22 July 1986 for entry clearance, leave to enter or remain or variation of leave to enter or remain as doctor or dentist;
  - (ii) any application made after 22 July 1986 for leave to enter or for variation of leave to enter or remain where a person has a current entry clearance or leave to enter or remain as a doctor or dentist which was either:-
    - (a) granted on or before 22 July 1986; or
    - (b) granted under sub-paragraph (i) above.

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37. (a) Subject to paragraphs 38 to 45 below the changes to the Rules set out in Section One shall apply to decisions taken on or after 23 July 1986 except that they shall not apply on or after that date to any further decision concerning leave to enter or variation of leave in respect of a person who has current entry clearance or leave to enter or remain (as the case may be) granted under the provisions of GSI 1983/24 (whether or not by virtue of the transitional provisions set out in paragraphs 40 - 45 below) and any further decision in respect of that person shall be made in accordance with GSI 1983/24 subject to the deletion in paragraphs 42, 55 and 121 thereof of the proviso relating to British citizenship.
- (b) Any reference in paragraphs 40 to 45 below to a person being admitted to the Bailiwick to join a person settled here (however expressed) includes a reference to a person accompanying someone who is admitted for settlement on the same occasion as that other person is admitted.
38. The changes to the Rules set out in Section One shall not apply to the wives and children to whom paragraph 41 of GSI 1983/24 applies and accordingly the provisions of GSI 1983/24 shall apply to them as if these changes had not been made.
39. The changes to the Rules set out in Section One shall not apply to the wives and children of Commonwealth citizens settled in the Bailiwick on 1 January 1973 and accordingly the provisions of GSI 1983/24 shall apply to them as if these changes had not been made.
40. In the case of a fiancée who, before 23 July 1986, sought admission to the Bailiwick for the purpose of marriage to a man settled here or who, before that date, applied for entry clearance for that purpose, paragraph 45 of GSI 1983/24 shall apply instead of paragraphs 42 and 43 as substituted by Section One.
41. In the case of a fiancée who, before 23 July 1986, applied for entry clearance for the purpose of marriage to a woman settled in the Bailiwick and who intends to settle in the Bailiwick after the marriage, paragraph 42 of GSI 1983/24 shall apply, subject to the deletion of the proviso relating to British citizenship, instead of paragraph 42 as substituted by Section One.
42. In the case of a woman married to a man present and settled in the Bailiwick who seeks admission to the Bailiwick and who applied for an entry clearance for that purpose before 23 July 1986 paragraphs 47 to 49 of GSI 1983/24 shall apply instead of paragraphs 47 and 48 as substituted by Section One.
43. In the case of a man married to a woman settled in the Bailiwick who seeks admission to the Bailiwick and who applied for an entry clearance for that purpose before 23 July 1986 paragraph 55 of GSI 1983/24 shall apply, subject to the deletion of the proviso relating to British citizenship, instead of paragraphs 47 and 48 as substituted by Section One.

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44. In the case of a woman admitted in a temporary capacity who applied before 23 July 1986 for variation of leave on the basis of her marriage to a man settled in the Bailiwick paragraph 119 of GSI 1983/24 shall apply instead of paragraph 119 as substituted by Section One.
45. In the case of a man admitted in a temporary capacity who applied before 23 July 1986 for variation of leave on the basis of his marriage to a woman settled in the Bailiwick paragraph 121 of GSI 1983/24 shall apply, subject to the deletion of the proviso relating to British citizenship, instead of paragraph 119 as substituted by Section One.

#### CITATION

These Rules may be cited as the Immigration (Guernsey) (Amendment) Rules 1986.

#### COMMENCEMENT

These Rules shall come into force on the 23rd day of July 1986.

Dated this 22nd day of July 1986.

#### R C BERRY

President of the States Board of Administration  
for and on behalf of the Board.

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#### EXPLANATORY NOTE

1. These Rules amend The Immigration (Guernsey) Rules 1983 in respect of overseas doctors and dentists seeking to work in the Bailiwick of Guernsey. The main change is the ending of general permit-free entry.
2. Provision is also made for the imposition of a visa requirement for certain citizens of Sri Lanka.
3. The Rules extend the right to be joined by a husband or male fiance to all settled women, subject to the primary purpose and other tests; apply the primary purpose and other tests (including the probationary period) to wives and female fiancées, (who will in future require entry clearances); apply a maintenance and accommodation test to fiance(e)s (both before and after the marriage), husbands, wives and all other relatives applying for settlement (to ensure that people admitted do not have recourse to public funds); provide that children accompanying one parent shall be given limited leave in line with that parent, if that parent is given leave to enter as a spouse; and prevent entry clearance applications being made in this country.

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4. Following the accession of Spain and Portugal to the European Community on 1 January 1986, the Rules extend the entitlement of Spanish and Portuguese nationals, subject to considerations of public policy, public security or public health, to enter the Bailiwick to set up in business, to become established in a self-employed occupation or otherwise to provide or receive services for remuneration. Spanish and Portuguese nationals will not, however, be free to take waged or salaried employment during a seven year transitional period; (that is until 1 January 1993). Until that date they will continue to be subject to the work permit scheme.