

VISITING THE UK – IMMIGRATION LAW & PRACTICALITIES

PRIVATE CLIENT

This note provides guidance on the scope of the visitor category under the UK Immigration Rules and when visitors will be required to obtain prior entry clearance, i.e. a visa.

ENTRY CLEARANCE

Holders of certain passports, known as “visa nationals” always need a visa to enter the UK; “direct airside transit visa nationals” require a visa even to transit through the UK. The current list of countries whose citizens are classed as visa nationals can be found on the UK Border Agency’s UK visas website at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.

Those who visit the UK frequently (either on business, for leisure or for family purposes), even if they are not visa nationals, may want to obtain from a British Embassy Visa Section or British Consulate a long term multiple entry visit visa in advance of travel. This allows unlimited entries to the UK for up to 6 months at any one time during the validity of the visa.

In certain cases, even non-visa nationals may require a prior visa to come to the UK as visitors: this depends on the sub-category they fall in when entering the UK.

GENERAL REQUIREMENTS

All visitors to the UK must show that:

- ◆ they plan to leave the UK at the end of the visit;
- ◆ they have enough money to support and accommodate themselves without working or help from public funds (or that they will be supported and accommodated by relatives or friends);
- ◆ they do not intend to work or provide goods or services in the UK;
- ◆ they do not intend to study (unless it is for a period of up to 30 days and it is not the main reason for the visit. There is also an exception for child visitors – see below); and
- ◆ they can meet the cost of the return or onward journey.

Documentation should be carried which demonstrates the above are satisfied, in the event of questions from UK Border Agency officials.

BUSINESS VISITORS

Non-visa nationals can make a business visit to the UK without a prior visa.

A business visitor must be able to show that they only want to visit the UK for up to 6 months and that they meet the general visitor conditions. The most important requirements for business visitors are that they:

- ◆ are based abroad;
- ◆ receive their salary from abroad and are able to support themselves for the duration of the trip; and
- ◆ have no intention of transferring their base to the UK, even if only temporarily.

Permissible activities for business visitors include:

- ◆ attending meetings or conferences;
- ◆ negotiating deals and signing contracts;
- ◆ undertaking fact-finding missions; and
- ◆ conducting site visits.

Other travellers and their activities which may come within the business visitor category include:

- ◆ film crews on location shoots only (provided that they are employed or paid by an overseas company);
- ◆ religious workers undertaking preaching or pastoral work;
- ◆ advisers or consultants employed by a foreign group company; and
- ◆ persons undertaking specific one-off training in UK work practices (but not on-the-job training).

For more business visitor categories see the UK Border Agency website (<http://www.gov.uk/business-visitor-visa>).

A business visitor needs to satisfy the immigration officer on arrival that the visit does not have significant implications for the resident work force and that they fall on the right side of the “transacting business” versus “UK employment” line.

Academic visitors carrying out postgraduate or private research can enter the UK under the business visitor category and may stay for up to 12 months, subject to prior entry clearance (even for non-visa nationals) if they are staying for over 6 months.

SPORTS VISITORS

Non-visa nationals do not require entry clearance for a sports visit of up to 6 months.

A professional or amateur sports person can come to the UK to take part in a particular sporting event, tournament or a series of events, provided that they will not be paid other than cash prizes or board and lodging expenses. They will also have to meet the general visitor conditions.

ENTERTAINER VISITORS

Non-visa nationals do not require entry clearance for an entertainer visit of up to 6 months.

A professional or amateur entertainer can enter the UK to take part in particular events, including charity events, provided that they will not be paid other than cash prizes or board and lodging expenses and can meet the general visitor requirements.

This category includes entertainers and their entourages (such as press officers or dieticians) and technical people such as producers and stage assistants.

In addition, certain festivals will continue to be permit-free.

Furthermore, entertainers can come to the UK for personal appearances and promotions not involving performance or for negotiating contracts, arranging sponsorships and attending unpaid auditions. All these activities will come within the business visitor category.

PERMITTED PAID ENGAGEMENTS

Following a formal invitation, certain types of visitors can come to the UK for up to 1 month to undertake a short-term fee-paid activity. Non-visa nationals do not require a visa. The pre-arranged engagement must relate to the expertise and qualifications of the visitor and to the visitor's full-time occupation in his home country. This category is limited to visiting examiners or assessors, lecturers, overseas designated pilot examiners, qualified lawyers and professional artists, entertainers and sportspersons.

SPECIAL VISITORS

This category covers a variety of reasons for entering the UK. The parent of a child at school in the UK is able to stay for up to 12 months and a visitor in transit for up to 48 hours. All other sub-categories of special visitors are given leave to remain in the UK for up to 6 months.

CHILD VISITORS

Child visitors who are not visa nationals do not require entry clearance. In addition to the general visitor requirements, they must show that:

- ◆ they are under 18;
- ◆ suitable arrangements are in place for their travel to and care in the UK;
- ◆ the parent or guardian of the child consents to the visit; and
- ◆ if studying in the UK, the child is studying at a school which is not state-funded.

PARENT OF A CHILD AT SCHOOL

A parent of a child aged under 12 who is attending a private day school can come to the UK for up to 12 months. If staying for longer than 6 months, a parent who is a non-visa national must obtain entry clearance. The parent is not entitled to work and must show that they have sufficient finance to maintain a second home in the UK, as well as meeting the general visitor requirements.

VISIT FOR PRIVATE MEDICAL TREATMENT

A visitor for private medical treatment will not require entry clearance if a non-visa national. In addition to the general visitor requirements, they must show that satisfactory arrangements for the treatment and payment are in place, that the treatment is for a limited period of time and that, if suffering from a communicable disease, there is no danger to public health.

VISIT FOR MARRIAGE OR CIVIL PARTNERSHIP CEREMONY

A visitor coming to the UK to marry or register a civil partnership always requires prior entry clearance. A person planning to marry or register a civil partnership in the UK and then stay in the UK thereafter should obtain entry clearance as a fiancé(e) or proposed civil partner.

STUDENT VISITOR

Student visitors can come to the UK for a course of up to 6 months (or 11 months if they will be studying an English language course) and do not require entry clearance if they are non-visa nationals, whereas prospective students coming to the UK always require entry clearance. Student visitors are not entitled to work, unlike those with leave to remain in the UK as students.

REPEAT VISITORS

There are no hard and fast rules restricting the number of visits that may be made to the UK and there is no requirement that a certain amount of time has to elapse between visits. However, the time between visits is likely to be taken into account by the immigration officer, who will be concerned by "serial visits". Essentially, the immigration officer must be satisfied that the visitor is not basing himself in the UK and is not working (or even overtly seeking work) in the UK without the appropriate authority.

The immigration officer will consider the stated purpose of the visit in the light of the length of time which has elapsed since previous visits. UK Border Agency guidelines state that visitors should not usually spend more than 6 months in any year in the UK.

PRACTICAL ADVICE ON ENTERING THE UK – CREDIBILITY IS KEY

Credibility is an important issue for immigration officers. To ensure that you have a smooth entry into the UK you should carry documentation with you to demonstrate that you are a genuine visitor in the terms of the Immigration Rules i.e. that you have sufficient funds in your bank account to support yourself and any dependants travelling with you, firm arrangements have been made for your accommodation during your stay and you have booked onward travel from the UK. In particular, it may be helpful to have your return or onward travel ticket with you on your arrival.

If the immigration officer is unconvinced, he has power to detain an applicant and can arrange immediate removal to the country from which the applicant has arrived (including authorising detention by others, such as aircraft captains charged with removing the applicant from the country). Given the penalties for misleading the authorities in an immigration matter, it is important not to answer questions incorrectly or to supply misleading evidence in support.

CONTACT DETAILS

If you would like further information or specific advice please contact your usual Macfarlanes contact or:

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APRIL 2014

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This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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