

*Draft Order laid before Parliament under sections 3A(13) and 3B(6) of the Immigration Act 1971,
for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2000 No.

IMMIGRATION

Immigration (Leave to Enter and Remain) Order 2000

Made - - - - - 2000

Coming into force

*Articles 1 to 12, 14 and
15(1) in accordance with
article 1(2)*

Articles 13 and 15(2) 30th July 2000

Whereas a draft of this Order has been laid before Parliament and approved by a resolution of each House in accordance with sections 3A(13) and 3B(6) of the Immigration Act 1971(1);

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by sections 3A(1), (2), (3), (4), (6) and (10) and 3B(2)(a) and (c) and (3)(a) of the Immigration Act 1971, hereby makes the following Order:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Immigration (Leave to Enter and Remain) Order 2000.

(2) Articles 1 to 12, 14 and 15(1) of this Order shall come into force on 28th April 2000 or, if later, on the day after the day on which it is made and articles 13 and 15(2) shall come into force on 30th July 2000.

(3) In this Order—

“the Act” means the Immigration Act 1971;

“control port” means a port in which a control area is designated under paragraph 26(3) of Schedule 2 to the Act;

(1) 1971 c. 77, sections 3A and 3B are inserted by sections 1 and 2 of the Immigration and Asylum Act 1999 (1999 c. 33).

“the Immigration Acts” means:

- (a) the Act;
- (b) the Immigration Act 1988⁽²⁾;
- (c) the Asylum and Immigration Appeals Act 1993⁽³⁾;
- (d) the Asylum and Immigration Act 1996⁽⁴⁾; and
- (e) the Immigration and Asylum Act 1999.

“responsible third party” means a person appearing to an immigration officer to be:

- (a) in charge of a group of people arriving in the United Kingdom together or intending to arrive in the United Kingdom together;
- (b) a tour operator;
- (c) the owner or agent of a ship, aircraft, train, hydrofoil or hovercraft;
- (d) the person responsible for the management of a control port or his agent; or
- (e) an official at a British Diplomatic Mission or at a British Consular Post or at the office of any person outside the United Kingdom and Islands who has been authorised by the Secretary of State to accept applications for entry clearance;

“tour operator” means a person who, otherwise than occasionally, organises and provides holidays to the public or a section of it; and

“visit visa” means an entry clearance granted for the purpose of entry to the United Kingdom as a visitor under the immigration rules.

PART II

ENTRY CLEARANCE AS LEAVE TO ENTER

Entry clearance as Leave to Enter

2. Subject to article 6(3), an entry clearance which complies with the requirements of article 3 shall have effect as leave to enter the United Kingdom to the extent specified in article 4, but subject to the conditions referred to in article 5.

Requirements

3.—(1) An entry clearance shall not have effect as leave to enter unless it complies with the requirements of this article.

(2) The entry clearance must specify the purpose for which the holder wishes to enter the United Kingdom.

(3) The entry clearance must be endorsed with:

- (a) the conditions to which it is subject; or
- (b) a statement that it is to have effect as indefinite leave to enter the United Kingdom.

(2) 1998 c. 14.

(3) 1993 c. 23.

(4) 1996 c. 49.

Extent to which Entry Clearance is to be Leave to Enter

4.—(1) A visit visa, during its period of validity, shall have effect as leave to enter the United Kingdom on an unlimited number of occasions, in accordance with paragraph (2).

(2) On each occasion the holder arrives in the United Kingdom, he shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the United Kingdom for a limited period beginning on the date of arrival, being:

- (a) six months if six months or more remain of the visa's period of validity; or
- (b) the visa's remaining period of validity, if less than six months.

(3) In the case of any other form of entry clearance, it shall have effect as leave to enter the United Kingdom on one occasion during its period of validity; and, on arrival in the United Kingdom, the holder shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the United Kingdom:

- (a) in the case of an entry clearance which is endorsed with a statement that it is to have effect as indefinite leave to enter the United Kingdom, for an indefinite period; or
- (b) in the case of an entry clearance which is endorsed with conditions, for a limited period, being the period beginning on the date on which the holder arrives in the United Kingdom and ending on the date of expiry of the entry clearance.

(4) In this article "period of validity" means the period beginning on the day on which the entry clearance becomes effective and ending on the day on which it expires.

Conditions

5. An entry clearance shall have effect as leave to enter subject to any conditions, being conditions of a kind that may be imposed on leave to enter given under section 3 of the Act, to which the entry clearance is subject and which are endorsed on it.

Incidental, supplementary and consequential provisions

6.—(1) Where an immigration officer exercises his power to cancel leave to enter under paragraph 2A(8) of Schedule 2 to the Act⁽⁵⁾ or article 13(7) below in respect of an entry clearance which has effect as leave to enter, the entry clearance shall cease to have effect.

(2) If the holder of an entry clearance—

- (a) arrives in the United Kingdom before the day on which it becomes effective; or
- (b) seeks to enter the United Kingdom for a purpose other than the purpose specified in the entry clearance,

an immigration officer may cancel the entry clearance.

(3) If the holder of an entry clearance which does not, at the time, have effect as leave to enter the United Kingdom seeks leave to enter the United Kingdom at any time before his departure for, or in the course of his journey to, the United Kingdom and is refused leave to enter under article 7, the entry clearance shall not have effect as leave to enter.

(5) Paragraph 2A is inserted into Schedule 2 to the Act by paragraph 57 of Schedule 14 to the Immigration and Asylum Act 1999.

PART III

FORM AND MANNER OF GIVING AND REFUSING LEAVE TO ENTER

Grant and refusal of leave to enter before arrival in the United Kingdom

7.—(1) An immigration officer, whether or not in the United Kingdom, may give or refuse a person leave to enter the United Kingdom at any time before his departure for, or in the course of his journey to, the United Kingdom.

(2) In order to determine whether or not to give leave to enter under this article (and, if so, for what period and subject to what conditions), an immigration officer may seek such information, and the production of such documents or copy documents, as an immigration officer would be entitled to obtain in an examination under paragraph 2 or 2A of Schedule 2 to the Act.

(3) An immigration officer may also require the person seeking leave to supply an up to date medical report.

(4) Failure by a person seeking leave to supply any information, documents, copy documents or medical report requested by an immigration officer under this article shall be a ground, in itself, for refusal of leave.

Grant or refusal of leave otherwise than by notice in writing

8.—(1) A notice giving or refusing leave to enter may, instead of being given in writing as required by section 4(1) of the Act, be given as follows.

(2) The notice may be given by facsimile or electronic mail.

(3) In the case of a notice giving or refusing leave to enter the United Kingdom as a visitor, it may be given orally, including by means of a telecommunications system.

(4) In paragraph (3), “leave to enter the United Kingdom as a visitor” means leave to enter as a visitor under the immigration rules for a period not exceeding six months, subject to conditions prohibiting employment and recourse to public funds (within the meaning of the immigration rules).

Grant or refusal of leave by notice to a responsible third party

9.—(1) Leave to enter may be given or refused to a person by means of a notice given (in such form and manner as permitted by the Act or this Order for a notice giving or refusing leave to enter) to a responsible third party acting on his behalf.

(2) A notice under paragraph (1) may refer to a person to whom leave is being granted or refused either by name or by reference to a description or category of persons which includes him.

Notice of refusal of leave

10.—(1) Where a notice refusing leave to enter to a person is given under article 8(3) or 9, an immigration officer shall as soon as practicable give to him a notice in writing stating that he has been refused leave to enter the United Kingdom and stating the reasons for the refusal.

(2) Where an immigration officer serves a notice under the Immigration (Appeals) Notices Regulations 1984(6) or under regulations made under paragraph 1 of Schedule 4 to the Immigration and Asylum Act 1999 in respect of the refusal, he shall not be required to serve a notice under paragraph (1).

(6) S.I.1984/2040.

(3) Any notice required by paragraph (1) to be given to any person may be delivered, or sent by post to—

- (a) that person’s last known or usual place of abode; or
- (b) any address provided by him for receipt of the notice.

Burden of proof

11. Where any question arises under the Immigration Acts as to whether a person has leave to enter the United Kingdom and he alleges that he has such leave by virtue of a notice given under article 8(3) or 9, the onus shall lie upon him to show the manner and date of his entry into the United Kingdom.

12.—(1) This article applies where—

- (a) an immigration officer has commenced examination of a person ('the applicant') under paragraph 2(1)(c) of Schedule 2 to the Act (examination to determine whether or not leave to enter should be given);
- (b) that examination has been adjourned, or the applicant has been required (under paragraph 2(3) of Schedule 2 to the Act) to submit to a further examination, whilst further inquiries are made (including, where the applicant has made an asylum claim, as to the Secretary of State’s decision on that claim); and
- (c) upon the completion of those inquiries, an immigration officer considers he is in a position to decide whether or not to give or refuse leave to enter without interviewing the applicant further.

(2) Where this article applies, any notice giving or refusing leave to enter which is on any date thereafter sent by post to the applicant (or is communicated to him in such form or manner as is permitted by this Order) shall be regarded, for the purposes of the Act, as having been given within the period of 24 hours specified in paragraph 6(1) of Schedule 2 to the Act⁽⁷⁾ (period within which notice giving or refusing leave to enter must be given after completion of examination).

PART IV

LEAVE WHICH DOES NOT LAPSE ON TRAVEL OUTSIDE COMMON TRAVEL AREA

13.—(1) In this article “leave” means—

- (a) leave to enter the United Kingdom (including leave to enter conferred by means of an entry clearance under article 2); and
- (b) leave to remain in the United Kingdom.

(2) Subject to paragraph (3), where a person has leave which is in force and which was:

- (a) conferred by means of an entry clearance (other than a visit visa) under article 2; or
- (b) given by an immigration officer or the Secretary of State for a period exceeding six months,

such leave shall not lapse on his going to a country or territory outside the common travel area.

(3) Paragraph (2) shall not apply:

- (a) where a limited leave has been varied by the Secretary of State; and

(7) Paragraph 6 is amended in relevant respects by section 39(6) of and paragraph 2 of Schedule 4 to, the British Nationality Act 1981 (1981 c. 61) and section 10 of the Immigration Act 1988.

- (b) following the variation the period of leave remaining is six months or less.
- (4) Leave which does not lapse under paragraph (2) shall remain in force either indefinitely (if it is unlimited) or until the date on which it would otherwise have expired (if limited), but—
- (a) where the holder has stayed outside the United Kingdom for a continuous period of more than two years, the leave (where the leave is unlimited) or any leave then remaining (where the leave is limited) shall thereupon lapse; and
- (b) any conditions to which the leave is subject shall be suspended for such time as the holder is outside the United Kingdom.
- (5) For the purposes of paragraphs 2 and 2A of Schedule 2 to the Act (examination by immigration officers, and medical examination), leave to remain which remains in force under this article shall be treated, upon the holder's arrival in the United Kingdom, as leave to enter which has been granted to the holder before his arrival.
- (6) Without prejudice to the provisions of section 4(1) of the Act, where the holder of leave which remains in force under this article is outside the United Kingdom, the Secretary of State may vary that leave (including any conditions to which it is subject) in such form and manner as permitted by the Act or this Order for the giving of leave to enter.
- (7) Where a person is outside the United Kingdom and has leave which is in force by virtue of this article, that leave may be cancelled:
- (a) in the case of leave to enter, by an immigration officer; or
- (b) in the case of leave to remain, by the Secretary of State.
- (8) In order to determine whether or not to vary (and, if so, in what manner) or cancel leave which remains in force under this article and which is held by a person who is outside the United Kingdom, an immigration officer or, as the case may be, the Secretary of State may seek such information, and the production of such documents or copy documents, as an immigration officer would be entitled to obtain in an examination under paragraph 2 or 2A of Schedule 2 to the Act and may also require the holder of the leave to supply an up to date medical report.
- (9) Failure to supply any information, documents, copy documents or medical report requested by an immigration officer or, as the case may be, the Secretary of State under this article shall be a ground, in itself, for cancellation of leave.
- (10) Section 3(4) of the Act (lapsing of leave upon travelling outside the common travel area) shall have effect subject to this article.

PART V

CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

14. Section 9(2)(8) of the Act (further provisions as to common travel area: conditions applicable to certain arrivals on a local journey) shall have effect as if, after the words “British Citizens”, there were inserted “and do not hold leave to enter or remain granted to them before their arrival”.

15.—(1) Article 12 shall apply where an applicant's examination has begun before the date that article comes into force, as well as where it begins on or after that date.

(2) Article 13 shall apply with respect to leave to enter or remain in the United Kingdom which is in force on the date that article comes into force, as well as to such leave given after that date.

(8) Section 9(2) is amended in relevant respects by section 39(6) of the British Nationality Act 1981 (1981 c. 61).

Home Office
2000

One of Her Majesty's Principal Secretaries of
State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes further provision with respect to the giving and refusing of leave to enter and remain in the United Kingdom. It also provides that a visa or other entry clearance may have effect as leave to enter the United Kingdom; and that, in certain circumstances, leave to enter or remain is not to lapse on travel outside the common travel area (Ireland, the Channel Islands and the Isle of Man).

In part II, article 2 provides that an entry clearance (including a visa) which satisfies the requirements specified in article 3 is to have effect as leave to enter the United Kingdom. The extent of that leave is set out in article 4. Article 5 deals with the conditions to which it is subject. Consequential provision is made in article 6 to enable Immigration Officers to cancel entry clearances in certain circumstances.

Part III makes further provision as to the form and manner of giving and refusing leave to enter the United Kingdom. Article 7 provides that leave to enter may be given or refused before a person arrives in the United Kingdom. It gives Immigration Officers powers to seek information necessary to come to a decision as to whether or not to give leave.

Article 8 provides that, instead of being given in writing, a notice giving or refusing leave to enter the United Kingdom may be given by facsimile, electronic mail or, in the case of those given leave as visitors under the immigration rules, orally. Article 9 provides that a notice giving or refusing leave to enter to a person may be given through a responsible third party acting on his behalf. Where notice of refusal of leave to enter is given orally or through a third party, article 10 requires an Immigration Officer to serve an additional written notice stating the reasons for refusal. Article 11 requires persons claiming that they have been given leave to enter orally or through a third party to prove the manner and date of their entry into the United Kingdom.

Article 12 is concerned with the situation where an immigration officer has begun to examine an arriving passenger to consider whether or not to give him leave to enter but does not, on that occasion, complete the examination. Instead of the interview having to be resumed, article 12 facilitates an immigration officer giving or refusing leave by post or similar means. This will, in particular, assist where an asylum claim has been considered by the Secretary of State in the interim, avoiding the need for the passenger to wait for an appointment at a port to have the leave decision communicated to him. Article 12 achieves this by ensuring that where the notice is so given, it cannot be argued that it was not given within the period required by paragraph 6(1) of Schedule 2 to the Immigration Act 1971.

Part IV provides that, in the circumstances specified, leave to enter or remain in the United Kingdom will not lapse on the holder leaving the common travel area. It confers consequential powers on Immigration Officers and the Secretary of State to cancel or vary leave which thus remains in force.

Part V makes transitional and consequential provision.