

2004 No. 3263

IMMIGRATION

The Immigration (Claimant's Credibility) Regulations 2004

Made - - - - *8th December 2004*

Laid before Parliament *10th December 2004*

Coming into force - - *1st January 2005*

The Secretary of State, in exercise of the powers conferred on him by section 8(7), (10) and (11) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004(a), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Immigration (Claimant's Credibility) Regulations 2004 and shall come into force on the 1st January 2005.

Interpretation

2. In these Regulations –

“the 2004 Act” means the Asylum and Immigration (Treatment of Claimants, etc) Act 2004;

“representative” means a person who appears to the decision maker –

(a) to be the representative of a person; and

(b) not to be prohibited from acting as a representative by section 84 of the Immigration and Asylum 1999 Act (b).

Manner of notifying immigration decision

3.—(1) For the purpose of section 8(5) of the 2004 Act a person may be notified of an immigration decision in any of the following ways –

(a) orally, including by means of a telecommunications system;

(b) in writing given by hand; or

(c) in writing

(i) sent by fax to a fax number;

(ii) sent by electronic mail to an electronic mail address; or

(iii) delivered or sent by postal service to an address,

provided for correspondence by the person or his representative.

(2) Where no fax number, electronic mail or postal address for correspondence has been provided by the person, notice of an immigration decision under paragraph (1)(c) may be delivered or sent by postal service to the last known or usual place of abode or place of business of the person or his representative.

(3) Notice given in accordance with paragraph (1) or (2) to the representative of the person, is to be taken to have been given to the person.

(4) In the case of a minor who does not have a representative, notice given in accordance with paragraph (1) or (2) to the parent, guardian or another adult who for the time being takes responsibility for the minor is taken to have been given to the minor.

Presumptions about receipt of notice

4.—(1) For the purpose of section 8(5) of the 2004 Act notice of an immigration decision shall, unless the contrary is proved, be treated as received;

- (a) where the notice is sent by postal service in which delivery or receipt is recorded to an address, on the recorded date of delivery or receipt, or on the second day after the day it was posted, whichever is the earlier;
- (b) in any other case in which the notice is sent by postal service on the second day after the day it was posted; or
- (c) in any other case, on the day and time that it was communicated orally, given by hand or sent by electronic mail or fax.

(2) For the purposes of determining the second day after a notice is posted under paragraph (1) (a) and (b) any day which is not a business day shall be excluded.

(3) In this regulation “business day” means any day other than Saturday or Sunday, a day which is a bank holiday under the Banking and Financial Dealings Act 1971^(a) in the part of the United Kingdom from or to which the notice is sent, Christmas Day or Good Friday.

Home Office
8th December 2004

Des Browne
Minister of State

(a) 1971 c.80.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the manner in which a person may be notified of an immigration decision for the purposes of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (“the 2004 Act”) and the time at which a person will be treated as having received the notification. Section 8 of the 2004 Act provides that a deciding authority, in determining whether to believe a statement made by or on behalf of a person who makes an asylum or human rights claim shall take into account certain specified behaviours as damaging a claimant’s credibility. Section 8(5) of the 2004 Act provides that one of those behaviours is making an asylum or human rights claim after being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification. An immigration decision is defined in section 8(7) of the 2004 Act.

Some of the immigration decisions listed in section 8(7) of the 2004 Act are also appealable decisions under section 82 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). Regulations made under section 105 of the 2002 Act provide for written notice to be given in a specified form to a person where an appealable immigration decision under section 82 of the 2002 Act is taken in respect of them. A notice which does not comply with the provisions of the regulations made under section 105 may, nevertheless amount to notice for the purposes of section 8(5) if it complies with the provisions of these Regulations.

Regulation 3 specifies the ways in which a person may be notified of an immigration decision.

Regulation 4 makes provision for when notice of an immigration decision is treated as having been received.

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