

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (NOTICES)(AMENDMENT) REGULATIONS 2008

2008 No. 684

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend the Immigration (Notices) Regulations 2003 (SI 2003/658) (“the 2003 Regulations”). The amendments:

- Extend the duty to inform a person subject to immigration control of the country or territory to which it is proposed to remove him to cases where it has been decided to remove the subject under section 47 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”).
- Ensure that persons refused entry clearance under the Points-Based System will not need to be given full notice of their appeal rights.
- Update the 2003 Regulations so that they refer correctly to primary legislation that has been amended since they were made; and
- Allow a notice of an immigration decision to be served electronically, by document exchange, by courier or by collection.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The 2003 Regulations govern the circumstances in which a person or his representative must be notified of an appealable decision under Part 5 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) or under the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003). They also govern the information that the notice of decision must contain.

4.2 These Regulations make four amendments to the 2003 Regulations.

4.3 The first is needed because of the commencement on 1 April 2008 of section 47 of the 2006 Act. This confers upon the Secretary of State a new power to decide that a subject of immigration control should be removed from the United Kingdom, even if that person’s leave to enter or remain in the UK has been extended by section 3C(2)(b) or 3D(2)(a) of the Immigration Act 1971. The amendment to regulation 5(1)(b) of the 2003 Regulations requires that, where such a decision is taken, the notice of decision must specify the country or territory to which the Secretary of State proposes to remove the subject.

- 4.4 The second amendment is needed because of the commencement- also on 1 April 2008- of section 4 of the 2006 Act. This broadens the range of refusals of entry clearance against which the subject can only appeal on human rights or race discrimination grounds to include all decisions made under the Points Based System.
- 4.5 The insertion into regulation 5(6) of the 2003 Regulations of a reference to section 88A(3) of the 2002 Act ensures that, as with other cases where the right of appeal is limited in the same way, it will not be necessary to give full notice of the appeal right or to provide the applicant with appeal papers when refusing an entry clearance application under the Points Based System.
- 4.6 The third amendment corrects the reference in regulation 5(6) of the 2003 Regulations to section 89(3) of the 2002 Act to a reference to section 89(2). This ensures that the 2003 Regulations refer accurately to the relevant provisions of the 2002 Act, which have since been amended by section 6 of the 2006 Act.
- 4.7 Finally, the fourth amendment allows a notice of an appealable decision to be sent electronically, by document exchange, by courier or to be collected.

5. Extent

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Amendment to regulation 5(1)(b)

- 7.1 This amendment is necessary to ensure that, when a removal decision is taken under section 47 of the 2006 Act, the decision notice informs the subject of the country or territory to which it is proposed to remove him. This duty applies in all other circumstances where an appealable decision that will involve the subject's removal or deportation is taken, so it is right that it should apply to removals under section 47.

Amendments to regulation 5(6)

- 7.2 Regulation 5(3)-(6) of the 2003 Regulations provide for how a refused applicant must be notified of any right of appeal to the Asylum and Immigration Tribunal (AIT). Where the subject has a full right of appeal to the AIT, the Regulations require the decision notice to tell him this, and to be accompanied by a Notice of Appeal.

- 7.3 However, the subject need not be notified of his appeal right where that right is limited to **residual grounds** (i.e., in an entry clearance case, to human rights and race discrimination issues). This is because we expect an individual to raise such serious issues of his own volition, and without needing to be invited to do so, and also because we do not wish to encourage speculative appeals on these grounds.
- 7.4 Currently, regulation 5(6) states that the subject need not be notified of his right of appeal where sections 90(4) and 91(2) of the 2002 Act apply. This means that where entry clearance is refused to non-family visitors and to short-term students we do not give full notification of appeal rights. These Regulations amend regulation 5(6) of the 2003 Regulations so they also refer to section 88A of the 2002 Act. That section is inserted into the 2002 Act by section 4 of the 2006 Act.
- 7.5 Section 4 of the 2006 Act restricts appeals against refusal of entry clearance under the Points-Based System to residual grounds. This amendment to the 2003 Regulations will mean that where entry clearance is refused under the Points-Based System, the subject will not be fully notified of his appeal rights, bringing the position into line with the other circumstances in which the applicant only has a residual appeal right.
- 7.6 The replacement of the reference to section 89(3) of the 2002 Act with a reference to section 89(2) is a purely technical amendment, which ensures that the 2003 Regulations cite the 2002 Act correctly after its amendment by section 6 of the 2006 Act.

Amendment to regulation 7(1)

- 7.7 It is our intention that immigration decisions, particularly under the Points-Based System, should be capable of being served electronically. The amendment to regulation 7(1) allows this. It is also intended that the service of immigration decisions is compliant with the processes used in Visa Application Centres outside the United Kingdom and the amendment allows this also. The amendment also permits service by courier where it is deemed appropriate, in the circumstances of the case, to do so.

8. Impact

- 8.1 An impact assessment has not been prepared for this instrument as it makes purely technical amendments and has no impact on business, charities or voluntary bodies.

9. Contact

- 9.1 All queries should be addressed to the Home Office's Immigration Enquiry Bureau on telephone 0870 606 7766 or by email to www.indpublicenquiries@homeoffice.gsi.gov.uk