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

2015 No.

IMMIGRATION

The Immigration (Leave to Enter and Remain) (Amendment) Order 2015

Made - - - - ***

Coming into force in accordance with article 1(1)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 3A(1), (2), (3), (4) and (10) and 3B(1), (2), and (3) of the Immigration Act 1971(**1**).

In accordance with sections 3A(13) and 3B(6) of that Act, a draft of this Order was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Immigration (Leave to Enter and Remain) (Amendment) Order 2015 and comes into force at the end of the period of 21 days beginning with the day on which it is made.

(2) In this Order "the 2000 Order" means the Immigration (Leave to Enter and Remain) Order 2000(**2**).

Amendment of the 2000 Order

2.—(1) The 2000 Order is amended as follows.

(2) In article 1(3) (citation, commencement and interpretation)—

(a) omit the definition of "the Immigration Acts";

(b) at the appropriate place insert—

""biometric immigration document" means a document recording biometric information;".

(3) In article 4 (extent to which entry clearance is to be leave to enter)—

(**1**) 1971 c. 77; section 3A was inserted by section 1 and section 3B by section 2 of the Immigration and Asylum Act 1999 (c. 33).
(**2**) S.I. 2000/1161 as amended by S.I. 2004/475, S.I. 2005/1159, S.I. 2010/957 and S.I. 2013/1749.

(a) in paragraph (3A)(c) after "clearance" insert "except those to which paragraph (3B) applies";

(b) after paragraph (3A) insert—

"(3B) Any form of entry clearance to which this paragraph applies 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 an indefinite period of leave, 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 the expiry of the holder's period of leave.

(3C) Paragraph (3B) applies to a short term biometric entry clearance (with a period of validity which ends before the expiry of the holder's intended period of leave) which is issued to a person who has made a successful application for a biometric immigration document from outside the United Kingdom, in order that the person may travel to the United Kingdom to obtain that biometric immigration document."; and

(c) after paragraph (4) insert—

"(5) In paragraphs (3B) and (3C) "period of leave" means the intended period of leave which—

(a) in the case of an indefinite intended period of leave, is endorsed on the person's short term biometric entry clearance; or

(b) in the case of a limited period of leave, is stated in the written decision which accompanies the person's short term biometric entry clearance,

and such a period of leave will only have effect on the person's arrival in the United Kingdom in accordance with paragraph (3B) and subject to the powers of variation, cancellation and refusal of leave under this Order, the Immigration Acts and the immigration rules.".

(4) In article 13 (leave which does not lapse on travel outside Common Travel Area)—

(a) in paragraph (1) after "this article" insert "and article 13A"; and

(b) in paragraph (4)(a) at the beginning insert "Subject to article 13A,".

(5) After article 13 insert—

"**Partners and children of members of HM Forces**

13A.—(1) Any period of time spent by a person to whom this article applies accompanying their partner, or, as the case may be, parent, who is posted outside the United Kingdom as a member of Her Majesty's Forces does not count towards the period mentioned in article 13(4)(a).

(2) This article applies to a person who has leave—

(a) as the partner or child of a member of HM Forces under Appendix Armed Forces to the immigration rules ("Appendix Armed Forces")(**3**);

(**3**) Appendix Armed Forces was inserted from 1st December 2013 by HC 803.

(b) as the spouse, civil partner, unmarried or same-sex partner, or child of a member of HM Forces under Part 7 of the immigration rules(**4**); or

(c) as the spouse, civil partner, unmarried or same-sex partner, or child of a British citizen or person who is settled in the United Kingdom under Part 8 of the immigration rules(**5**) where that British Citizen or, as the case may be, settled person, is a member of Her Majesty's Forces.

(3) In paragraph (1)—

(a) the reference to a person's "partner" means—

(i) in relation to a person falling within paragraph (2)(a), the partner in respect of whom they have leave under Appendix Armed Forces and,

(ii) in relation to a person falling within paragraph (2)(b) or (2)(c), the spouse, civil partner, unmarried or same sex partner in respect of whom they have leave under Part 7 or, as the case may be, Part 8, of the immigration rules; and

(b) the reference to a person's "parent" means the parent in respect of whom they have leave under Appendix Armed Forces, or, as the case may be, Part 7 or Part 8 of the immigration rules.

(4) In this article "Her Majesty's Forces" has the same meaning as in the Armed Forces Act 2006(**6**).".

Name
Minister of State
Home Office

Date

(**4**) Paragraphs 276Q to 276AI make provision for leave as the spouse etc. of a member of HM Forces. They were originally inserted from 5th December 2005 by HC 582 and paragraphs 276Q to 276AF were substituted from 31st March 2009 by HC 314. Further amendments have been made but they are not relevant to this Order.

(**5**) Part 8 makes provision for family members of persons present and settled in the United Kingdom to seek leave to enter or remain. Amendments have been made to this Part but they are not relevant to this Order.

(**6**) 2006 c. 52.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various amendments to the Immigration (Leave to Enter and Remain) Order 2000 ("the 2000 Order").

Article 4 of the 2000 Order provides for the extent to which entry clearance documents, which satisfy the requirements in article 3, have effect as leave to enter under article 2. This Order amends article 4 to enable short term biometric entry clearance documents issued to overseas applicants for biometric immigration documents to have effect as leave to enter the United Kingdom.

Article 13 of the 2000 Order makes provision for certain types of leave to enter or remain not to lapse on leaving the common travel area, unless a person remains outside the United Kingdom for a continuous period of more than two years. Article 2(5) inserts a new article 13A in the 2000 Order such that any period spent by the partner or child accompanying a member of HM Forces overseas will not count towards the calculation of that two year period (such that if the posting lasts more than two years and the partner or child does not return to the UK during that time, their leave will not lapse).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.