

**EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (LEAVE TO ENTER AND REMAIN) (AMENDMENT)
ORDER 2010**

2010 No. [XXXX]

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of the Immigration (Leave to Enter and Remain) (Amendment) Order 2010 (the “2010 Order”) is to amend the Immigration (Leave to Enter and Remain) Order 2000 to give certain arriving passengers who enter the UK through an automated gate, leave to enter the UK automatically.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative context**
 - 4.1 The Immigration (Leave to Enter and Remain) Order 2000 deals with a variety of matters about leave to enter the United Kingdom, including the granting of leave and the giving of notice of leave. The 2010 Order amends this by providing that certain arriving passengers who enter the United Kingdom through an automated gate shall be given leave to enter. It does this by first enabling an immigration officer to authorise a person to be a person who may obtain leave to enter the United Kingdom by passing through an automated gate. The instrument then provides that when such a person passes through an automated gate, that person shall automatically be granted leave to enter for six months, subject to specified conditions. The purpose of the 2010 Order is to further facilitate the smooth arrival of passengers into the United Kingdom.
5. **Territorial Extent and Application**
 - 5.1 This instrument extends to all of the United Kingdom.
6. **European Convention on Human Rights**
 - 6.1 Phil Woolas, Minister of State for Borders and Immigration has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (Leave to Enter and Remain) (Amendment) Order 2010 are compatible with the Convention rights.
7. **Policy background**
 - 7.1 The purpose of the 2010 Order is to enable the further roll out of automated

gates at the UK border, thereby facilitating the smooth arrival of passengers into the United Kingdom.

- 7.2 There are two types of automated gates already in operation at the UK border, designed to allow eligible users to enter the United Kingdom without having to queue up at the manual immigration control. Both types of gates make a series of checks against Home Office systems to ensure that the passenger is eligible. The first type of automated gates are for nationals of the European Economic Area who hold a second generation biometric passport (this scheme is called e-Passport Gate). The gates verify the identity of the arriving passenger by comparing the “live” face against the facial image obtained when the person applied for the passport, which is securely stored on a chip within the passport. The scheme does not require any pre-enrolment or registration over and above that required for the passport. e-Passport Gates are currently being trialled in ten locations in the UK for use by British citizens and EEA nationals holding an appropriate passport.
- 7.3 The second type of automated gate makes use of a “pre-enrolment scheme”, requiring users to enrol on the system and provide various biographic and biometric information before they can use the gates. In principle, regular travellers from any country may apply to be enrolled on the scheme. Every applicant undergoes a face-to-face interview with a Border Force officer. During this interview the officer takes the applicant’s biometrics and checks the passport and immigration status and history. If the Officer is satisfied that the individual is eligible to join the scheme and is unlikely to abuse it they will be allowed to join.
- 7.4 When the passenger passes through the gates, the gates verify the passenger’s identity by comparing the biometrics provided at the gate with those provided at the time of registration. The biometrics currently used are based on a photograph of the iris patterns. The biometrics and biographical information are securely stored on a Home Office system. Upon passing through the gate, where a person requires leave to enter the United Kingdom, they are given a printed notice setting out the leave granted.
- 7.5 The next generation of pre-enrolment gate schemes will be simpler and easier to use than the current system and will expedite the passage of travellers across the UK border. For persons who require leave to enter the United Kingdom, the new gates will not provide a printed notice setting out the leave. The 2010 Order is therefore needed to make provision for the granting of leave and the applicable conditions. Leave is to be granted automatically to such persons upon their passing through the gates. They will have been informed of the nature of the leave that is granted and the applicable conditions as part of the enrollment process.
- 7.6 Persons given leave under the terms of the 2010 Order will be given six months leave to enter the United Kingdom, subject to conditions prohibiting employment, and prohibiting recourse to public funds. This matches the leave to enter they would be granted if they passed through manual immigration controls. The 2010 Order only makes provision for the granting of leave to the categories of visitor listed in the Order. Other categories of visitor, such as student visitors and marriage visitors would need to use the manual immigration controls.

- ***Consolidation***

7.7 The 2010 Order is the third instrument to amend the Immigration (Leave to Enter and Remain) Order 2000. The Department does not currently have any plans to consolidate these amendments.

8. Consultation outcome

8.1 The 2010 Order makes technical changes to the method of granting leave to enter. There will be no noticeable impact on passengers and use of any automated gate scheme is entirely voluntary. For these reasons, we have not conducted a consultation exercise.

9. Guidance

9.1 Operational guidance for Border Force officers will ensure that persons who enrol on an automated gate scheme are given full information about their leave, the way it is granted and the conditions attached.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for the 2010 Order as automated gate schemes are voluntary to use and will not create a government burden on business.

11. Regulating small businesses

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The UK Border Agency will keep the impact of this new method of granting leave under review and the legislation may be amended accordingly.

13. Contact

The following UK Border Agency officials are able to answer queries regarding the instrument.

Laurence Jessup 020 8760 2166 Laurence.Jessup4@homeoffice.gsi.gov.uk

Andy Clayton 020 8760 2640 Andy.Clayton@homeoffice.gsi.gov.uk