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STATUTORY INSTRUMENTS

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**2003 No. 658**

**IMMIGRATION**

**The Immigration (Notices) Regulations 2003**

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| <i>Made</i>                   | - - - - | <i>11th March 2003</i> |
| <i>Laid before Parliament</i> |         | <i>11th March 2003</i> |
| <i>Coming into force</i>      | - -     | <i>1st April 2003</i>  |

The Secretary of State, in exercise of the powers conferred on him by section 105 and 112(1) to (3) of the Nationality, Immigration and Asylum Act 2002(1), hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Immigration (Notices) Regulations 2003 and shall come into force on the 1st April 2003.

**Interpretation**

2. In these Regulations—

“the 1971 Act” means the Immigration Act 1971(2);

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997(3);

“the 1999 Act” means the Immigration and Asylum Act 1999(4);

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

“decision-maker” means—

- (a) the Secretary of State;
- (b) an immigration officer;
- (c) an entry clearance officer;

“EEA decision” means an immigration decision within the meaning of section 109(3) of the 2002 Act or a decision under Regulation 1251/70(5) which concerns a person's—

- (a) removal from the United Kingdom;

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(1) 2002 c. 41.

(2) 1971 c. 77.

(3) 1997 c. 68.

(4) 1999 c. 33.

(5) Commission Regulation (EEC) No. 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in the State (OJ No. 142, 30.6.70 p.24).

- (b) entitlement to be admitted to the United Kingdom; or
  - (c) entitlement to be issued with or to have removed, or not to have removed, a residence permit or residence document;
- “entry clearance officer” means a person responsible for the grant or refusal of entry clearance;
- “immigration decision” has the same meaning as in section 82(2) of the 2002 Act;
- “minor” means a person who is under 18 years of age;
- “notice of appeal” means a notice in the appropriate prescribed form in accordance with the rules for the time being in force under section 106(1) of the 2002 Act;
- “Procedure Rules” means rules made under section 106(1) of the 2002 Act;
- “representative” means a person who appears to the decision-maker—
- (a) to be the representative of a person referred to in regulation 4(1) below; and
  - (b) not to be prohibited from acting as a representative by section 84 of the 1999 Act.

### Transitional provision

3. These Regulations apply to a decision to make a deportation order which, by virtue of paragraph 12 of Schedule 15 to the 1999 Act,—

- (a) is appealable under section 15 of the 1971 Act<sup>(6)</sup> (appeals in respect of deportation orders); or
- (b) would be appealable under section 15 of the 1971 Act, but for section 15(3) (deportation conducive to public good), and is appealable under section 2(1)(c) of the 1997 Act (appeal to Special Immigration Appeals Commission against a decision to make a deportation order).

### Notice of decisions

4.—(1) Subject to regulation 6, the decision-maker must give written notice to a person of any immigration decision or EEA decision taken in respect of him which is appealable.

(2) The decision-maker must give written notice to a person of the relevant grant of leave to enter or remain if, as a result of that grant, a right of appeal arises under section 83(2) of the 2002 Act.

(3) If the notice is given to the representative of the person, it is to be taken to have been given to the person.

### Contents of notice

5.—(1) A notice given under regulation 4(1) is to—

- (a) include or be accompanied by a statement of the reasons for the decision to which it relates; and
- (b) if it relates to an immigration decision specified in section 82(2)(a), (g), (h), (i) or (j) of the 2002 Act, state the country or territory to which it is proposed to remove the person.

(2) A notice given under regulation 4(2) is to include or be accompanied by a statement of the reasons for the rejection of the claim for asylum.

(3) Subject to paragraph (6), the notice given under regulation 4 shall also include, or be accompanied by, a statement which advises the person of—

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<sup>(6)</sup> Section 15 was repealed by Schedule 16 to the 1999 Act and, although that repeal was brought into force by S.I.2000/2444, that section continues to have effect by virtue of paragraph 12 of Schedule 15 to the 1999 Act.

- (a) his right of appeal and the statutory provision on which his right of appeal is based;
- (b) whether or not such an appeal may be brought while in the United Kingdom;
- (c) the grounds on which such an appeal may be brought; and
- (d) the facilities available for advice and assistance in connection with such an appeal.

(4) Subject to paragraph (6), the notice given under regulation 4 shall be accompanied by a notice of appeal which indicates the time limit for bringing the appeal, the address to which it should be sent or may be taken by hand and a fax number for service by fax.

(5) Subject to paragraph (6), where the exercise of the right is restricted by an exception or limitation by virtue of a provision of Part 5 of the 2002 Act, the notice given under regulation 4 shall include or be accompanied by a statement which refers to the provision limiting or restricting the right of appeal.

(6) The notice given under regulation 4 need not comply with paragraphs (3), (4) and (5) where a right of appeal may only be exercised on the grounds referred to in section 84(1)(b), (c) or (g) of the 2002 Act by virtue of the operation of section 88(4), 89(3), 90(4), 91(2), 98(4) or (5) of that Act.

(7) Where notice is given under regulation 4 and paragraph (6) applies, if the person claims in relation to the immigration decision or the EEA decision that—

- (a) the decision is unlawful by virtue of section 19B of the Race Relations Act 1976<sup>(7)</sup> (discrimination by public authorities);
- (b) the decision is unlawful under section 6 of the Human Rights Act 1998<sup>(8)</sup> (public authority not to act contrary to the Human Rights Convention) as being incompatible with the person's Convention rights; or
- (c) removal of the person from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the person's Convention rights,

the decision-maker must as soon as practicable re-serve the notice of decision under regulation 4 and paragraph (6) of this regulation shall not apply.

(8) Where a notice is re-served under paragraph (7), the time limit for appeal under the Procedure Rules shall be calculated as if the notice of decision had been served on the date on which it was re-served.

### **Certain notices under the 1971 Act deemed to comply with the Regulations**

6.—(1) This regulation applies where the power to—

- (a) refuse leave to enter; or
- (b) vary leave to enter or remain in the United Kingdom;

is exercised by notice in writing under section 4 of (administration of control), or paragraph 6(2) (notice of decisions of leave to enter or remain) of Schedule 2 to, the 1971 Act.

(2) If—

- (a) the statement required by regulation 5(3) is included in or accompanies that notice; and
- (b) the notice is given in accordance with the provision of regulation 7;

the notice is to be taken to have been given under regulation 4(1) for the purposes of these Regulations.

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(7) 1976 c. 74; section 19B was inserted by section 1 of the Race Relations (Amendment) Act 2000 (c. 34).

(8) 1998 c. 42.

## Service of notice

7.—(1) A notice required to be given under regulation 4 may be—

- (a) given by hand;
- (b) sent by fax;
- (c) sent by postal service in which delivery or receipt is recorded to:—
  - (i) an address provided for correspondence by the person or his representative; or
  - (ii) where no address for correspondence has been provided by the person, the last-known or usual place of abode or place of business of the person or his representative.

(2) Where—

- (a) a person's whereabouts are not known; and
- (b)
  - (i) no address has been provided for correspondence and the decision-maker does not know the last-known or usual place of abode or place of business of the person; or
  - (ii) the address provided to the decision-maker is defective, false or no longer in use by the person; and
- (c) no representative appears to be acting for the person,

the notice shall be deemed to have been given when the decision-maker enters a record of the above circumstances and places the signed notice on the relevant file.

(3) Where a notice has been given in accordance with paragraph (2) and then subsequently the person is located, he shall be given a copy of the notice and details of when and how it was given as soon as is practicable.

(4) Where a notice is sent by post in accordance with paragraph (1)(c) it shall be deemed to have been served, unless the contrary is proved,—

- (a) on the second day after it was posted if it is sent to a place within the United Kingdom;
- (b) on the twenty-eighth day after it was posted if it is sent to a place outside the United Kingdom.

(5) For the purposes of paragraph (4) the period is to be calculated—

- (a) excluding the day on which the notice is posted; and
- (b) in the case of paragraph (4)(a), excluding any day which is not a business day.

(6) 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<sup>(9)</sup> in the part of the United Kingdom to which the notice is sent, Christmas Day or Good Friday.

(7) A notice given under regulation 4 may, in the case of a minor who does not have a representative, be given to the parent, guardian or another adult who for the time being takes responsibility for the child.

Home Office  
11th March 2003

*Beverley Hughes*  
Minister of State

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(9) 1971 c. 80.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations replace the Immigration and Asylum Appeals (Notices) Regulations 2000 (the 2000 Regulations).

Regulation 4 requires written notice of any immigration decision, EEA decision or appealable decision under section 83 of the 2002 Act to be given to a person, or his representative.

Regulation 5 deals with the contents of the notice. Reasons must be given for the decision in the notice. Where a decision is appealable, the notice must state the rights of appeal and give details of whether the right can be exercised in the United Kingdom. It must also state the grounds on which such an appeal can be brought, the facilities available for advice and assistance and be accompanied by a notice of appeal. Where the decision or action is not appealable or the exercise of an appeal is restricted, the provision, exemption or limitation should be referred to. A residual right of appeal does not need to be notified unless the person raises one of the relevant issues in relation to the decision.

Regulation 6 provides that where a notice of decision is served under section 4 of the Immigration Act 1971 or paragraph 6 of Schedule 2 to that Act, providing that the notice is served in accordance with regulation 7 and information about appeal rights is provided, the notice will be taken to have been given under regulation 4(1) of these Regulations.

Regulation 7 deals with service of the notice given under regulation 4. It may be given by hand, sent by fax or sent by way of recorded delivery to an address which has been provided for correspondence. Where no such address has been provided, or the address is defective, false or no longer in use, the notice can be sent to the last known or usual place of abode or business. Regulation 7(2) provides for deemed service in a case where a person's whereabouts are not known, no address has been provided or it is defective, false or no longer in use and there appears to be no representative. Regulation 7(7) provides for service on a person acting on behalf of a minor.