

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (REMOVAL NOTICES) REGULATIONS 2023

2023 No. 1127

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Secretary of State for the Home Department ('SSHD') and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of the SI is to set out what methods can be used to serve specific written notices to individuals and their representatives for example by post and email. It also explains when a notice is deemed to have been received by the recipient.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Under section 10 of the Immigration and Asylum Act 1999 ('s.10') the SSHD has the power to remove people who are unlawfully in the UK. Section 46 of the Nationality and Borders Act 2022 ('s.46') amends s.10 to incorporate new provisions on notice periods and the scenarios where a notice period is not required. These provisions oblige the SSHD to serve specific written notices.
- 6.2 The Immigration (Removal Notices) Regulations 2023 ('Regulations') contain the detail on how to lawfully give effect to the power in s.46. S.46 prescribes what notices need to be served and the Regulations prescribe how the notices must be served.

7. Policy background

What is being done and why?

- 7.1 A person who requires permission to be in the UK can be removed from the UK if they do not have the relevant permission. The person has a choice to leave the UK

voluntarily. Where the person does not depart the UK voluntarily, their removal from the UK can be enforced.

- 7.2 A person who is subject to enforced removal is entitled to a notice period. A notice period is the time given to a person prior to their enforced removal, for them to seek legal advice. During the notice period, the person cannot be removed from the UK.
- 7.3 Under s.46, all individuals who are subject to enforced removal have a right to receive a minimum notice period of 5 working days. S.46 also sets out the exceptions to this and the circumstances where the person can be removed without receiving a notice period.
- 7.4 S.46 specifically defines which letters the person who is subject to enforced removal must receive before their enforced removal. These letters are called the Notice of Intention to Remove ('NIR') and the Notice of Departure Details ('NDD'). The NIR tells the person that the SSHD intends to remove them to a specific destination and that the person has a minimum of 5 working days to seek legal advice during which the person will not be removed. The NDD informs the person of the date of their removal to the specific destination and any transit stops enroute if relevant.
- 7.5 The Regulations govern the service of the NIR and NDD. They set out the methods for example, by hand, email or post, that can be used to serve the NIR and NDD on the person being removed and any legal representative. The Regulations also govern how the NIR and NDD should be served to a minor.
- 7.6 The Regulations set out the deemed date of service of the NIR and NDD depending on the method of delivery used. The deemed date of service is the date where the notice is understood to be received by the person. This deemed date of service is important in the context of the NIR because that is the point from which the minimum notice period is calculated.
- 7.7 Prior to the enactment of s.46, the position on notice periods was set out in policy guidance. Under that policy, depending on the circumstances, some individuals received a minimum notice period of 72 hours whilst others received 5 working days. There was no statute in place that governed this area of immigration policy.
- 7.8 The NIR and NDD are new notices that have been created by s.46. As a result, there are no existing regulations or policy that govern how these documents should be served to the recipient.
- 7.9 Bringing this policy area into statute formalises the position on notice periods. As s.46 gives all individuals subject to enforced removal the same minimum notice period length, it will be easier to follow and implement.
- 7.10 This policy area is important because it concerns a person's common law right to have access to justice prior to their enforced removal. There have been a number of legal decisions made by the courts in relation to this wider area. By putting the policy on a statutory footing and subjecting it to parliamentary scrutiny, it is hoped that the new revised policy on notice periods will be less susceptible to challenge.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not amend another instrument therefore consolidation is not being done.

10. Consultation outcome

- 10.1 A wide consultation process was carried out regarding the Nationality and Borders Bill where stakeholders and members of the public shared their views over a 6-week period from 24th March 2021. Nothing specific on the service of notices was raised. No third-party campaigns have raised concerns to date.
- 10.2 MPs from the House of Commons were engaged with during the Committee stage of the Nationality and Borders Bill 2022 on 28th October 2021. The then clause was voted to stand part of the Bill in the Committee including the regulation-making power.
- 10.3 The Bill had been scrutinised by the Joint Committee on Human Rights. The Ninth Report - Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement was published on 1st December 2021. Nothing specific regarding the service of notices was raised in the report.
- 10.4 Peers were engaged with during the Committee stage of the Nationality and Borders Bill 2022 on 8th February 2022. The then clause was voted to stand part of the Bill in the Committee including the regulation-making power.

11. Guidance

- 11.1 Policy guidance titled ‘Enforced Removals: Notice Periods’ has been created in relation to s.46. This guidance tells Immigration Enforcement Immigration Officers (IOs) and Immigration Enforcement caseworkers about when a notice period is required and the circumstances in which it is not. In addition, the requirements relating to the service of the NIR and NDD as prescribed by the Regulations are set out.
- 11.2 This guidance will be publicly available on 20th November 2023 which is the implementation date for s.46.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the SI does not generate any significant additional cost for the public sector. Individuals subject to enforced removal already receive documents prior to their removal and operational systems are already in place to enable the service of documents.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 There is no specific mechanism for monitoring and reviewing the impact of this SI. As part of the operationalisation of s.46 that there will be improvements in the IT

systems, which will in turn aid better data collection in relation to notice periods and removals more generally.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Sukanya Deshraj at the Home Office Telephone: 07776506877 or email: sukanya.deshraj@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Matthew Bligh, Deputy Director for Enforcement and Criminality Policy, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for Immigration, Robert Jenrick MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.