Draft Order laid before Parliament under sections 3A and 3B of the Immigration Act 1971, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

IMMIGRATION

The Immigration (Leave to Enter and Remain) (Amendment) Order 2013

Made - - - -	***
Coming into force - -	***

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

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

Citation and commencement

1. This Order may be cited as the Immigration (Leave to Enter and Remain) (Amendment) Order 2013 and shall come into force on the day after the day on which it is made.

Amendments to the Immigration (Leave to Enter and Remain) Order 2000

2. The Immigration (Leave to Enter and Remain) Order 2000(**b**) is amended as follows.

3. In article 1(3)—

(a) after the definition of "convention travel document"(**c**) insert—

""decision-maker" means—

(a) the Secretary of State;

(b) an immigration officer;"; and

(b) after the definition of "Refugee Convention"(**d**) insert—

""representative" means a person who appears to the decision-maker—

(a) to be the representative of the person referred to in article 8ZA(1); and

(b) not to be prohibited from acting as a representative by section 84 of the Immigration and Asylum Act 1999;".

(**a**) 1971 c.77. Section 3A was inserted by section 1 of the Immigration and Asylum Act 1999 (c.33) and section 3B was inserted by section 2 of that Act.
(**b**) S.I. 2000/1161 as amended by S.I. 2004/475, S.I. 2005/1159 and S.I. 2010/957.
(**c**) The definition of "convention travel document" was inserted by S.I. 2004/475.
(**d**) The definition of "Refugee Convention" was inserted by S.I. 2004/475.

4. For article 8(**a**) (grant or refusal of leave otherwise than by notice in writing) substitute—

"Oral grant or refusal of leave

8.—(1) A notice giving or refusing leave to enter the United Kingdom as a visitor may, instead of being given in writing as required by section 4(1) of the Act, be given orally, including by means of a telephone.

(2) In paragraph (1), "leave to enter the United Kingdom as a visitor" means leave to enter as a visitor under the immigration rules for a period not exceeding six months, subject to conditions prohibiting employment and recourse to public funds (within the meaning of the immigration rules).

Grant, refusal or variation of leave by notice in writing

8ZA.—(1) A notice in writing—

(a) giving leave to enter or remain in the United Kingdom;

(b) refusing leave to enter or remain in the United Kingdom;

(c) refusing to vary a person's leave to enter or remain in the United Kingdom; or

(d) varying a person's leave to enter or remain in the United Kingdom,

may be given to the person affected as required by section 4(1) of the Act as follows.

(2) The notice may be—

(a) given by hand;

(b) sent by fax;

(c) sent by postal service to a postal address provided for correspondence by the person or the person's representative;

(d) sent electronically to an e-mail address provided for correspondence by the person or the person's representative;

(e) sent by document exchange to a document exchange number or address; or

(f) sent by courier.

(3) Where no postal or e-mail address for correspondence has been provided, the notice may be sent—

(a) by postal service to—

(i) the last-known or usual place of abode, place of study or place of business of the person; or

(ii) the last-known or usual place of business of the person's representative; or

(b) electronically to—

(i) the last-known e-mail address for the person (including at the person's last-known place of study or place of business); or

(ii) the last-known e-mail address of the person's representative.

(4) Where attempts to give notice in accordance with paragraphs (2) and (3) are not possible or have failed, when the decision-maker records the reasons for this and places the notice on file the notice shall be deemed to have been given.

(5) Where a notice is deemed to have been given in accordance with paragraph (4) and then subsequently the person is located, the person shall as soon as is practicable be given a copy of the notice and details of when and how it was given.

(**a**) Article 8 was amended by S.I. 2010/957.

(6) A notice given under this article may, in the case of a person who is under 18 years of age and does not have a representative, be given to the parent, guardian or another adult who for the time being takes responsibility for the child.

Presumptions about receipt of notice

8ZB.—(1) Where a notice is sent in accordance with article 8ZA, it shall be deemed to have been given to the person affected, unless the contrary is proved—

(a) where the notice is sent by postal service—

(i) on the second day after it was sent by postal service in which delivery or receipt is recorded if sent to a place within the United Kingdom;

(ii) on the 28th day after it was posted if sent to a place outside the United Kingdom;

(b) where the notice is sent by fax, e-mail, document exchange or courier, on the day it was sent.

(2) For the purposes of paragraph (1)(a) the period is to be calculated excluding the day on which the notice is posted.

(3) For the purposes of paragraph (1)(a)(i) the period is to be calculated excluding any day which is not a business day.

(4) In paragraph (3) "business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**a**) in the part of the United Kingdom to which the notice is sent.

Notice not given

8ZC. No notice under article 8(1) or 8ZA(1)(a) shall be given where a person is given leave to enter the United Kingdom by passing through an automated gate in accordance with article 8A."

5. In article 10—

(a) in paragraph (1), for "article 8(3)" substitute "article 8(1)";

(b) in paragraph (3), for the words from "delivered" to the end substitute "given in accordance with article 8ZA".

6. In article 11, for "article 8(3)" substitute "article 8(1)".

Home Office
Date

Name
Minister of State

(**a**) 1971 c.80.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Immigration (Leave to Enter and Remain) Order 2000.

Article 4 substitutes the existing article 8 and adds three new articles. Article 8 has been substituted so that it no longer provides for notice being given by facsimile or electronic mail. It continues to make provision concerning oral notice giving or refusing leave to enter the United Kingdom as a visitor under the immigration rules for a period not exceeding six months. Notice sent electronically or by fax is now dealt with in article 8ZA.

New article 8ZA deals with service of a written notice granting, refusing, refusing to vary or varying leave. Article 8ZA(2) and (3) sets out the ways in which written notice may be given. Article 8ZA(4) provides for deemed service where notice cannot be given in accordance with article 8ZA(2) and (3).

New article 8ZB deals with deemed time of service when a notice is sent by post, fax, e-mail, document exchange or courier.

New article 8ZC includes provision similar to that previously in article 8 and provides that, where leave to enter the United Kingdom is given under article 8A, no notice of the leave is given to the person.

Article 5 amends article 10 to reflect the amendments made to article 8 and to provide that written notice may be given in accordance with article 8ZA.

Article 6 amends article 11 to reflect the amendments to article 8.

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