EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (LEAVE TO ENTER AND REMAIN) (AMENDMENT) ORDER 2013

2013 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 Immigration (Leave to Enter and Remain) (Amendment) Order amends the Immigration (Leave to Enter and Remain) Order 2000 to set out the procedures that the Home Office may follow for the giving, refusing or varying of leave by notice in writing in accordance with section 4(1) of the Immigration Act 1971.

2.2 The Order, which broadly follows the provisions for service of appealable immigration decisions under the Immigration (Notices) Regulations 2003 sets out the methods for service, stipulates when a notice is deemed to have been given to the person concerned, and therefore takes effect, and requires a copy of a notice which has been served to file to be given to a person as soon as possible if they are subsequently located.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 In the recent case of *Syed (curtailment of leave – notice) [2013] UKUT 144 IAC* the Upper Tribunal found that, in the absence of an Order covering service of non-appealable decisions, such a decision must be served under section 4 of the Immigration Act 1971 and the Secretary of State must communicate the notice to the person, in order for it to have effect.

4.2 This Order creates a consistent approach for the service of all immigration decisions by amending the Immigration (Leave to Enter and Remain) Order 2000 so that the rules governing the service of non-appealable decisions reflect the provisions which govern the service of appealable immigration decisions under the Immigration (Notices) Regulations 2003.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Mark Harper MP, the Immigration Minister, has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (Leave to Enter and Remain) (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 It is essential that the Government can maintain effective immigration controls by varying, amending or refusing leave as appropriate. Service of these immigration decisions which attract a right of appeal is provided for in the Immigration (Notices) Regulations 2003. Those regulations require the Secretary of State to undertake reasonable steps to ensure that an individual receives notice of such a decision sets out the range of methods which may be used to do so. Where reasonable steps have been taken but the Secretary of State has not been able to serve the notice on the individual or their legal representative the regulations state that the decision will have effect from the point that it is served on the individual's file. Where a notice is served to file in this way a copy of the notice must be given to a person as soon as possible if they are subsequently located.

7.2 However, no such provisions are in place for immigration decisions which do not attract a right of appeal, such as decisions to:

- curtail leave such that the individual has leave remaining
- refuse an application to vary leave which is made and decided before the individual's leave expires
- refuse an application for leave which is made by an individual who has no valid leave at the point of application

7.3 The primary policy objective is to enable the effective service of decisions to curtail leave of migrants who are sponsored under the Points Based System (PBS). Currently, when a PBS sponsor loses their sponsor licence or they notify the Home Office that they have withdrawn sponsorship from an individual, the Home Office considers whether it would be appropriate to curtail leave to 60 days, giving the individual an opportunity to regularise their stay or leave the United Kingdom.

7.4 The Order will also cover other non-appealable decisions relating to refusals to vary or grant leave. Effective service of notices is usually straightforward in these circumstances as migrants provide an in-country address with their application.

7.5 The Order creates a consistent framework for the service for immigration decisions, regardless of whether they attract a right of appeal or not. This framework protects the individual, by requiring the Secretary of State to take reasonable steps to notify them of a non-appealable decision which affects their immigration status. It also requires the Secretary of State to provide the individual with a copy of the notice if service was not possible but they are subsequently located.

7.6 Importantly it also protects the Secretary of State's ability to exercise effective immigration controls by ensuring that decisions take effect, even where reasonable attempts to serve the notice on the individual have been exhausted. In doing so the Order reduces the potential for individuals to challenge the lawful service of these decisions, prevents migrants from avoiding immigration controls by seeking to evade contact and improves the efficiency and effectiveness of operational casework, compliance and enforcement action.

- ***Consolidation***

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

8. Consultation outcome

8.1 Consultation on the Order has been limited to internal consultation within the Home Office.

9. Guidance

9.1 The processes set out in the Order will be reflected in the operational guidance which is published on the Home Office web pages.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The Order has no impact on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Home Office keeps all policies under regular review and will amend policy and associated legislation relating to the service of immigration decisions if necessary.

13. Contact

Neil Curtis at the Home Office Tel: 020 7035 0085 or email: neil.curtis@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.