EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (CONTINUATION OF LEAVE) (NOTICES) REGULATIONS 2006

2006 No. 2170

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Section 3C of the Immigration Act 1971 provides that, where a person applies for a variation of leave to enter or remain in the United Kingdom and this application remains undecided by the date on which their leave would expire, leave will be extended until the date of any such decision and thereafter during the period in which any appeal could be brought or is pending. These Regulations specify that an application for variation of leave is decided for the purpose of section 3C when a notice of decision is given in accordance with regulations made under section 105 of the Nationality Immigration and Asylum Act 2002 or when a notice of decision is given in accordance with section 4(1) of the Immigration Act 1971.

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

3.1 None

4. Legislative Background

4.1 Section 11(4) of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act") amends section 3C(6) of the Immigration Act 1971 ("the 1971 Act") , creating a new power to make regulations to specify when an application for variation of leave is decided. Section 11 of the 2006 Act is being commenced simultaneously together with the introduction of these regulations.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7.1 It is often not possible to decide an application for an extension of leave to remain until after the period of leave has expired. To prevent

applicants from becoming overstayers through no fault of their own, section 3C of the Immigration Act 1971 automatically extends the leave of a person who has made an in time application for further leave to remain until their application is decided and thereafter during any period in which an appeal against any refusal could be brought or is pending

7.2 One potential problem with the present drafting of section 3C is that it only expressly provides for an application to be regarded as having been decided when notice of such decision is given in accordance with regulations made under section 105 of the Nationality, Immigration and Asylum Act 2002. The Regulations made under section 105 are the Immigration (Notices) Regulations 2003 and provide for notice of those decisions which give rise to a right of appeal to the Asylum and Immigration Tribunal. The Regulations do not provide for notification of any decision which does not give rise to such a right of appeal. On a literal interpretation of section 3C(6) this would mean that an application for further leave was not to be regarded as having been decided where the decision on the application was not appealable. A decision to grant the application or a decision to refuse the application where the applicant continues to enjoy leave under the initial grant would not give rise to a right of appeal.

7.3 These Regulations remove the possibility on this construction being placed on section 3C by providing that an application is to be regarded as having been decided either when a notice of an appealable decision is given under the Immigration (Notices) Regulations 2003 or when written notice of an unappealble decision is given in accordance with section 4(1) of the Immigration Act 1971.

8. Impact

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

9. Contact

Andrew Elliot at the Home Office Tel: 020 8760 8740 or e-mail: Andrew.Elliot8@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.