EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (NOTICES) (AMENDMENT) REGULATIONS 2006

2006 No. 2168

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 These Regulations amend the Immigration (Notices) Regulations 2003 ('The 2003 Regulations') to add to the circumstances in which a written notice of decision must be provided.

2.2 These Regulations also amend the 2003 Regulations so that the Secretary of State can specify more than one proposed country and/or territory of removal in the notice of immigration decision. This will aid full consideration of asylum and human rights appeals where there is more than one possible country and/or territory of removal.

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

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

4. Legislative Background

4.1 These Regulations amend the Immigration (Notices) Regulations 2003 ('The 2003 Regulations').

4.2 The 2003 Regulations govern the circumstances in which a person or his representative must be notified of an appealable decision under Part 5 of the Nationality, Immigration and Asylum Act 2002 ('The 2002 Act') or under the Immigration (European Economic Area) Regulations 2006 No. 1003. They also govern the information that the notice of decision must contain.

4.3. Regulation 4(2A) is an addition to the regulations to ensure that a notice of decision must be given where a right of appeal arises under section 83A(2) of the 2002 Act. A section 83A appeal is a new appeal right created by section 1 of the Immigration, Asylum and Nationality Act 2006 ('The 2006 Act').

4.4 Regulation 5(1)(b) provides that where the notice relates to an immigration decision specified in section 82(2)(a), (g), (h), (i), (ia) or (j) of the 2002 Act it must state the country or territory to which it is proposed to remove the affected party. This information is of particular importance as it allows the

Asylum and Immigration Tribunal, when considering any appeal against the decision in question, to examine whether the ground in section 84(1)(g) of the 2002 Act (that removal in consequence of the 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) is made out by reference to a specific country. These regulations amend regulation 5(1)(b) so as to allow the decision maker to specify that the affected party may be removed to any one of a number of countries or territories specified in the notice of decision. This will allow the Asylum and Immigration Tribunal, when hearing an appeal against any such decision, to consider whether removal to any of the countries or territories specified would breach the Refugee Convention or be unlawful by virtue of section 6 of the Human Rights Act 1998. This will allow the Tribunal to consider fully issues concerning risk on return where there is a dispute as to the country or territory to which the appellant can be returned or where the SSHD is satisfied that the appellant can be removed to more than one country.

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.

7. Policy background to change to Regulation 4

7.1 The change to Regulation 4 is a technical amendment designed to ensure that when section 1 of the 2006 Act is commenced, notification of the relevant right of appeal will be required under the 2003 Regulations. This notification will ensure that those who are entitled to bring such an appeal are aware that they may do so.

7.2 Section 1 of the 2006 Act creates a new section 83A in the 2002 Act. When a decision is made that someone is no longer a refugee but they are given leave to remain on another basis, section 83A creates a right of appeal against this loss of recognition that they require protection under the 1951 Refugee Convention. This change to the 2003 Regulations will coincide with commencement of section 1 of the 2006 Act.

Policy background to changes to Regulation 5

7.3 Where an immigration decision has been made the policy goal is to have a single statutory appeal against that decision.

7.4 The Asylum and Immigration Tribunal (AIT), which hears appeals, including those in which the appellant raises asylum and/or human rights objections to removal from the UK, can only consider whether a person would be at risk on return to the country specified in the notice of immigration

decision. When there is a dispute as to the country or territory to which the appellant can be returned the current practice is normally to specify the country or territory that the asylum seeker claims to come from in the notice of immigration decision. This is to give a concrete focus to the asylum and human rights aspects of the appeal. The problem is that as the Notice Regulations currently only allow the Secretary of State to specify one country or territory in the notice of immigration decision, if the Tribunal disbelieves the appellant's claim to come from a certain country or territory there is no basis on which they may then proceed to consider risk on return in the country or territory to which the Secretary of State wishes to remove them.

7.5 The same applies where the claimant is potentially removable to more than one country: only one of the countries to which the claimant is potentially removable can be specified in the notice of immigration decision and the AIT can only consider risk in relation to that country.

7.6 The policy goal of having a single statutory appeal can best be achieved by ensuring that, where there is a dispute as to the country or territory to which the applicant can be returned, or the claimant is potentially removable to more than one country, the AIT can consider whether the appellant would be at risk if removed to either the country which he claims to come from **or** to the country to which the Secretary of State asserts he can be removed, or alternatively whether he can safely be removed to any of the countries to which he is potentially removable. This objective can be achieved by making the amendment hereby proposed.

7.7 An appeal would be allowed if the claimant could not be returned to any of the countries or territories specified in the notice of immigration decision without breaching the 1951 Refugee Convention or the ECHR. If the AIT found that removal to one of the specified countries would breach either convention but that removal to another would not then the appeal would fail. We would then give effect to the Tribunal's findings by setting removal directions to the country to which the appellant could safely be removed.

7.8 This amendment will ensure that all potential asylum or human rights issues are fully ventilated during a single statutory appeal before the dedicated fact finding body, the AIT, rather than in the High Court.

7.9 A consultation exercise on this change has been undertaken via the mechanism of the Asylum Processes Stakeholder Group (APSG). This group primarily comprises non governmental organisations with an interest in the asylum process. Certain technical concerns were raised, which have been addressed.

8. Impact

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

8.2 The impact on the public sector is not expected to be significant.

9. Contact

9.1 Neil Parkin at the Home Office Tel: 0208 760 8672 or e-mail: neil.parkin@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.