



## IMMIGRATION (LEAVE TO ENTER AND REMAIN) ORDER 2019

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Statutory Document No. 2019/0147

*Immigration Act 1971 (of Parliament)*

## IMMIGRATION (LEAVE TO ENTER AND REMAIN) ORDER 2019

*Laid before Tynwald:* 9 April 2019  
*Coming into Operation:* 30 March 2019

The Cabinet Office makes the following Order under sections 3A(1), (2), (3), (4), (6), and (10) and 3B(2)(a) and (c) and (3)(a) of the Immigration Act 1971 as it has effect in the Isle of Man<sup>1</sup>.

### PART 1 GENERAL

#### 1 Title

This Order is the Immigration (Leave to Enter and Remain) Order 2019.

#### 2 Commencement

This Order comes into operation on 30 March 2019.

#### 3 Interpretation

(1) In this Order-

“**the Act**” means the Immigration Act 1971;

“**biometric immigration document**” means a document recording biometric information;

“**control port**” means a port in which a control area is designated under paragraph 26(3) of Schedule 2 to the Act;

“**convention travel document**” means a travel document issued pursuant to Article 28 of the Refugee Convention, except where that travel document was issued by the United Kingdom Government;

“**Crown Service**” means service of the Crown, whether within Her Majesty’s dominions or elsewhere, under Her Majesty’s government in the United

<sup>1</sup> S.I. 2008/680

Kingdom or in a Northern Ireland department or under the Scottish Administration or under the Welsh Government;

“**decision-maker**” means -

- (a) the Minister; or
- (b) an immigration officer;

“**Her Majesty’s Forces**” has the same meaning as in the Armed Forces Act 2006<sup>2</sup>;

“**Refugee Convention**” means the Convention relating to the Status of Refugees done at Geneva on 28<sup>th</sup> July 1951 and its Protocol;

“**representative**” means a person who appears to the decision-maker to be the representative of the person referred to in article 11(1)

“**responsible third party**” means a person appearing to an immigration officer to be-

- (a) in charge of a group of people arriving in the Isle of Man together or intending to arrive in the Isle of Man together;
- (b) a tour operator;
- (c) the owner or agent of a ship, or aircraft;
- (d) the person responsible for the management of a control port or his agent; or
- (e) an official at a British Diplomatic Mission or at a British Consular Post or at the office of any person outside the United Kingdom and Islands who has been authorised by the Secretary of State to accept applications for entry clearance;

“**tour operator**” means a person who, otherwise than occasionally, organises and provides holidays to the public or a section of it;

“**UK and Islands**” has the same meaning as given in section 33(1) of the Immigration Act 1971; and

“**visit visa**” means an entry clearance granted for the purpose of entry to the Isle of Man as a visitor under the immigration rules.

## **PART 2 ENTRY CLEARANCE AS LEAVE TO ENTER**

### **4 Entry clearance as leave to enter**

Subject to article 8(3), an entry clearance which complies with the requirements of article 5 shall have effect as leave to enter the Isle of Man to the extent specified in article 6, but subject to the conditions referred to in article 7.

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<sup>2</sup> 2006 c. 52

## 5 Requirements

- (1) Subject to paragraph (4), an entry clearance shall only have effect as leave to enter if it complies with the requirements of this article.
- (2) The entry clearance must specify the purpose for which the holder wishes to enter the Isle of Man.
- (3) The entry clearance must be endorsed with—
  - (a) the conditions to which it is subject; or
  - (b) a statement that it is to have effect as indefinite leave to enter the Isle of Man.
- (4) Subject to paragraph (5), an entry clearance shall not have effect as leave to enter if it is endorsed on a convention travel document.
- (5) An entry clearance endorsed on a convention travel document before 1 May 2008 shall have effect as leave to enter.

## 6 Extent to which entry clearance is to be leave to enter

- (1) A visit visa (other than a visit visa for private medical treatment or for entry as an academic visitor) unless endorsed with a statement that it is to have effect as a single-entry visa, shall have effect as leave to enter the Isle of Man on an unlimited number of occasions during its period of validity, in accordance with paragraph (2).
- (2) On each occasion the holder arrives in the Isle of Man, they shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the Isle of Man for a limited period beginning on the date of arrival, being—
  - (a) 6 months if 6 months or more remain of the visa's period of validity; or
  - (b) the visa's remaining period of validity, if less than 6 months.
- (3) A visit visa granted for private medical treatment or for entry as an academic visitor, unless endorsed with a statement that it is to have effect as a single-entry visa, shall have effect as leave to enter the Isle of Man on an unlimited number of occasions during its period of validity in accordance with paragraph (4).
- (4) On arrival in the Isle of Man on each occasion, the holder shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the Isle of Man for a limited period beginning on the date of arrival, being—
  - (a) where the visit visa is granted for private medical treatment—
    - (i) 11 months if 11 months remain of the visa's period of validity; or

- (ii) the visa's remaining period of validity, if less than 11 months; and
  - (b) where the visit visa is granted for entry as an academic visitor—
    - (i) 12 months if 12 months remain of the visa's period of validity; or
    - (ii) the visa's remaining period of validity, if less than 12 months.
- (5) In the case of any form of entry clearance to which this paragraph applies, it shall have effect as leave to enter the Isle of Man on one occasion during its period of validity, and , on arrival in the Isle of Man, the holder shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the Isle of Man—
- (a) In the case of an entry clearance which is endorsed with a statement that it is to have effect as an indefinite leave to enter the Isle of Man, for an indefinite period; or
  - (b) in the case of an entry clearance which is endorsed with conditions, for a limited period, being the period beginning on the date on which the holder arrives in the Isle of Man and ending on the date of expiry of the entry clearance.
- (6) Paragraph (5) applies to—
- (a) a visit visa endorsed with a statement that it is to have effect as a single entry visa; and
  - (b) any other form of entry clearance except those to which paragraph (7) applies.
- (7) A short term biometric entry clearance shall have effect as leave to enter the Isle of Man on one occasion during its period of validity, and, on arrival in the Isle of Man, the holder shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the Isle of Man—
- (a) in the case of an entry clearance which is endorsed with an indefinite period of leave, for an indefinite period; or
  - (b) in the case of an entry clearance which is endorsed with conditions, for a limited period, being the period beginning on the date on which the holder arrives in the Isle of Man and ending on the date of the expiry of the holder's period of leave.
- (8) In this article—
- (a) **“period of leave”** means the intended period of leave which—
    - (i) in the case of an indefinite intended period of leave, is endorsed on the person's short term biometric entry clearance; or

- (ii) in the case of a limited period of leave, is stated in the written decision which accompanies the person's short term biometric entry clearance, and such a period of leave will only have effect on the person's arrival in the Isle of Man in accordance with paragraph (7) and subject to the powers of variation, cancellation and refusal of leave under this Order, the Immigration Acts and the immigration rules;
- (b) **“short term biometric entry clearance”** means an entry clearance document which-
  - (i) is issued to a person who has made a successful application for a biometric immigration document from outside the Isle of Man, in order that the person may travel to the Isle of Man to obtain that biometric immigration document; and
  - (ii) has a period of validity ending before the expiry of the period of leave that the holder's biometric immigration document will evidence;
- (c) **“period of validity”** means the period beginning on the day on which entry clearance and ending on the day which it expires.

## 7 Conditions

An entry clearance shall have effect as leave to enter subject to any conditions, being conditions of a kind that may be imposed on leave to enter given under section 3 of the Act, to which the entry clearance is subject and which are endorsed on it.

## 8 Incidental, supplementary and consequential provisions

- (1) Where an immigration officer exercises his or her power to cancel leave to enter under paragraph 2A(8) of Schedule 2 to the Act or article 17(7) below in respect of an entry clearance which has effect as leave to enter, the entry clearance shall cease to have effect.
- (2) If the holder of an entry clearance—
  - (a) arrives in the Isle of Man before the day on which it becomes effective; or
  - (b) seeks to enter the Isle of Man for a purpose other than the purpose specified in the entry clearance,an immigration officer may cancel the entry clearance.
- (3) If the holder of an entry clearance which does not, at the time, have effect as leave to enter the Isle of Man seeks leave to enter the Isle of Man at any time before his or her departure for, or in the course of his or her

journey to, the Isle of Man and is refused leave to enter under article 9, the entry clearance shall not have effect as leave to enter.

## **PART 3 FORM AND MANNER OF GIVING AND REFUSING LEAVE TO ENTER**

### **9 Grant and refusal of leave to enter before arrival in the Isle of Man**

- (1) An immigration officer may give or refuse a person leave to enter the Isle of Man at any time before his or her departure for, or in the course of his or her journey to, the Isle of Man.
- (2) In order to determine whether or not to give leave to enter under this article (and, if so, for what period and subject to what conditions), an immigration officer may seek such information, and the production of such documents or copy documents, as an immigration officer would be entitled to obtain in an examination under paragraph 2 or 2A of Schedule 2 to the Act.
- (3) An immigration officer may also require the person seeking leave to supply an up to date medical report.
- (4) Failure by a person seeking leave to supply any information, documents, copy documents or medical report requested by an immigration officer under this article shall be a ground, in itself, for refusal of leave.

### **10 Oral grant or refusal of leave**

- (1) A notice giving or refusing leave to enter the Isle of Man to a person to whom this article applies 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) This article applies to a person seeking leave to enter the Isle of Man as—
  - (a) a visitor for a period not exceeding 6 months<sup>3</sup>;
  - (b) a short-term student for a period not exceeding 6 months<sup>4</sup>; or
  - (c) a parent of a Tier 4 (child) student for a period not exceeding 6 months<sup>5</sup>,

under the immigration rules and subject to conditions prohibiting employment and recourse to public funds (within the meaning of the immigration rules as they apply to persons to whom this article applies).

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<sup>3</sup> See Appendix V to the immigration rules

<sup>4</sup> See Part 3 of the immigration rules

<sup>5</sup> See Part 7 of the immigration rules



**11 Grant, refusal or variation of leave by notice in writing**

- (1) A notice in writing—
- (a) giving leave to enter or remain in the Isle of Man;
  - (b) refusing leave to enter or remain in the Isle of Man;
  - (c) refusing to vary a person's leave to enter or remain in the Isle of Man; or
  - (d) varying a person's leave to enter or remain in the Isle of Man,
- 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 email address provided for correspondence by the person or the person's representative; or
  - (e) sent by courier.
- (3) Where no postal or email 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 email address for the person (including at the person's last-known place of study or place of business); or
    - (ii) the last-known email 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.

- (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.

## 12 Presumptions about receipt of notice

- (1) Where a notice is sent in accordance with article 11, 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 Isle of Man;
- (ii) on the 28<sup>th</sup> day after it was posted if sent to a place outside the Isle of Man;
- (b) where the notice is sent by fax or email, 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 Bank Holidays Act 1989 in the Isle of Man<sup>6</sup>.

## 13 Grant or refusal of leave by notice to a responsible third party

- (1) Leave to enter may be given or refused to a person by means of a notice given (in such form and manner as permitted by the Act or this Order for a notice giving or refusing leave to enter) to a responsible third party acting on his or her behalf.
- (2) A notice under paragraph (1) may refer to a person to whom leave is being granted or refused either by name or by reference to a description or category of persons which includes them.

## 14 Notice of refusal of leave

- (1) Where a notice refusing leave to enter to a person is given under article 10(1) or 13, an immigration officer shall as soon as practicable give to him or her a notice in writing stating that he or she has been refused leave to enter the Isle of Man and stating the reasons for the refusal.
- (2) Any notice required by paragraph (1) to be given to any person may be given in accordance with article 11.

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<sup>6</sup> AT 5 of 1989

## 15 Burden of proof

Where any question arises under the Immigration Acts as to whether a person has leave to enter the Isle of Man and he or she alleges that he or she has such leave by virtue of a notice given under article 10(1) or 13 the onus shall lie upon him or her to show the manner and date of his or her entry into the Isle of Man.

## 16 Period for giving notice in certain cases

- (1) This article applies where—
  - (a) an immigration officer has commenced examination of a person ('the applicant') under paragraph 2(1)(c) of Schedule 2 to the Act (examination to determine whether or not leave to enter should be given);
  - (b) that examination has been adjourned, or the applicant has been required (under paragraph 2(3) of Schedule 2 to the Act) to submit to a further examination, whilst further inquiries are made (including, where the applicant has made an asylum claim, as to the Minister's decision on that claim); and
  - (c) upon the completion of those inquiries, an immigration officer considers they are in a position to decide whether or not to give or refuse leave to enter without interviewing the applicant further.
- (2) Where this article applies, any notice giving or refusing leave to enter which is on any date thereafter sent by post to the applicant (or is communicated to them in such form or manner as is permitted by this Order) shall be regarded, for the purposes of the Act, as having been given within the period of 24 hours specified in paragraph 6(1) of Schedule 2 to the Act (period within which notice giving or refusing leave to enter must be given after completion of examination).

## PART 4 LEAVE WHICH DOES NOT LAPSE ON TRAVEL OUTSIDE THE COMMON TRAVEL AREA

### 17 Leave which does not lapse on travel outside common travel area

- (1) In this Part "leave" means—
  - (a) leave to enter the Isle of Man (including leave to enter conferred by means of an entry clearance under article 5); and
  - (b) leave to remain in the Isle of Man.
- (2) Subject to paragraph (3), where a person has leave which is in force and which was—
  - (a) conferred by means of an entry clearance (other than a visit visa) under article 4; or

- (b) given by an immigration officer or the Minister for a period exceeding 6 months,
- such leave shall not lapse on him or her going to a country or territory outside the common travel area.
- (3) Paragraph (2) shall not apply —
- (a) where a limited leave has been varied by the Minister; and
- (b) following the variation the period of leave remaining is 6 months or less.
- (4) Leave which does not lapse under paragraph (2) shall remain in force either indefinitely (if it is unlimited) or until the date on which it would otherwise have expired (if limited), but—
- (a) where the holder has unlimited leave granted by virtue of Appendix EU to the immigration rules, subject to article 19, the unlimited leave lapses if the holder stays outside the UK and Islands for a continuous period of more than—
- (i) 4 years, in the case of unlimited leave granted by virtue of Appendix EU to the immigration rules as a Swiss national or a family member of a Swiss national; or
- (ii) 5 years, in all other cases;
- (b) in any other case and subject to articles 18 and 19 where the holder has stayed outside the UK and Islands for a continuous period of more than 2 years, the leave (where the leave is unlimited) or any leave then remaining (where the leave is limited) shall thereupon lapse; and
- (c) any conditions to which the leave is subject shall be suspended for such time as the holder is outside the UK and Islands.
- (5) For the purposes of paragraphs 2 and 2A of Schedule 2 to the Act (examination by immigration officers, and medical examination), leave to remain which remains in force under this article shall be treated, upon the holder's arrival in the Isle of Man, as leave to enter which has been granted to the holder before his or her arrival.
- (6) Without prejudice to the provisions of section 4(1) of the Act, where the holder of leave which remains in force under this article is outside the Isle of Man, the Minister may vary that leave (including any conditions to which it is subject) in such form and manner as permitted by the Act or this Order for the giving of leave to enter.
- (7) Where a person is outside the Isle of Man and has leave which is in force by virtue of this article, that leave may be cancelled —
- (a) in the case of leave to enter, by an immigration officer; or
- (b) in the case of leave to remain, by the Minister.

- (8) In order to determine whether or not to vary (and, if so, in what manner) or cancel leave which remains in force under this article and which is held by a person who is outside the Isle of Man, an immigration officer or, as the case may be, the Minister may seek such information, and the production of such documents or copy documents, as an immigration officer would be entitled to obtain in an examination under paragraph 2 or 2A of Schedule 2 to the Act and may also require the holder of the leave to supply an up to date medical report.
- (9) Failure to supply any information, documents, copy documents or medical report requested by an immigration officer or, as the case may be, the Minister under this article shall be a ground, in itself, for cancellation of leave.
- (10) Section 3(4) of the Act (lapsing of leave upon travelling outside the common travel area) shall have effect subject to this article.

## 18 Partners and children of Crown servants

- (1) This article applies to a person who has—
  - (a) limited leave -
    - (i) as the partner or child of a British citizen or person who is settled in the Isle of Man under Appendix FM to the immigration rules (Appendix FM), or
    - (ii) outside the provision of the immigration rules on the basis of family life under article 8 of the European Convention on Human Rights (“article 8”), or
  - (b) indefinite leave, other than unlimited leave granted by virtue of Appendix EU to the immigration rules.
- (2) The period mentioned in article 17(4)(b) does not include any period during which the person is accompanying his or her partner or parent if -
  - (a) the partner or parent is posted outside the UK and Islands in employment falling within paragraph (3); and
  - (b) the partner or parent—
    - (i) is a British citizen,
    - (ii) has indefinite leave, or
    - (iii) has a right of permanent residence in the Isle of Man by virtue of an enforceable EU right or any provision made under sections 2B(1) and (2) of the European Communities Act 1973 or section 17 of the European Union and Trade Act 2019.
- (3) Employment falls within this paragraph if it is—
  - (a) employment in the British Council as a permanent member of that Council; or

- (b) employment on Crown service.
- (4) In this article—
  - (a) a person's partner means—
    - (i) in relation to a person to whom paragraph (1)(a) applies, the partner in respect of whom the person has limited leave under Appendix FM or outside the provision of the immigration rules on the basis of family life under article 8;
    - (ii) in relation to a person to whom paragraph (1)(b) applies—
      - (aa) the spouse or civil partner of that person,
      - (bb) the fiancé(e) or proposed civil partner of that person, or
      - (cc) someone who has been living together with that person in a relationship akin to a marriage or civil partnership for at least 2 years;
  - (b) A person's parent—
    - (i) in relation to a person to whom paragraph (1)(a) applies, means the parent in respect of whom they have limited leave under Appendix FM or outside the provisions of the immigration rules on the basis of family life under article 8;
    - (ii) in relation to a person to whom paragraph (1)(b) applies, is to be construed in accordance with paragraph 6 (interpretation) of the immigration rules.

## **19 Crown servants etc with leave granted by virtue of Appendix EU to the immigration rules**

- (1) Any period of time spent outside the UK and Islands by a person to whom this article applies does not count towards the period mentioned in article 17(4)(a) or 17(4)(b).
- (2) This article applies to a person who has leave granted by virtue of Appendix EU to the immigration rules and who is –
  - (a) a member of Her Majesty's Forces posted outside the UK and Islands;
  - (b) a national of a member State, Iceland, Liechtenstein, Norway or Switzerland posted outside the UK and Islands in employment-
    - (i) on Crown service, or
    - (ii) in the British Council as a permanent member of the Council;
  - (c) accompanying a person who is posted outside the UK and Islands-
    - (i) in employment on Crown service,

- (ii) in employment in the British Council as a permanent member of that Council, or
- (iii) as a member of Her Majesty's Forces.

## **20 Revocations, consequential and transitional provisions**

- (1) Schedule 1 (Consequential and transitional provisions) has effect.

## **21 Revocations**

- (1) Schedule 2 (Revocations) has effect.

**MADE 26<sup>TH</sup> MARCH 2019**

**HOWARD QUAYLE**  
*Minister for the Cabinet Office*





**SCHEDULE 1****CONSEQUENTIAL AND TRANSITIONAL PROVISIONS**

- (1) Section 9(2) of the Act (further provisions as to the common travel area: conditions applicable to certain arrivals on a local journey) shall have effect as if, after the words “British citizens”, there were inserted “and do not hold leave to enter or remain granted to them before their arrival”.
- (2) Article 16 shall apply where an applicant’s examination has begun before the date that article comes into force, as well as where it begins on or after that date.
- (3) Article 17 shall apply with respect to leave to enter or remain in the Isle of Man which is in force on the date that article comes into force, as well as to such leave given after that date.

**SCHEDULE 2**

**REVOCATIONS**

- (1) The Immigration (Leave to Enter and Remain) Order 2008<sup>7</sup> is revoked.

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<sup>7</sup> SD 172/08



*EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order makes further provision with respect to the giving and refusing of leave to enter and remain in the Isle of Man. It also provides that a visa or other entry clearance may have effect as leave to enter the Isle of Man; and that, in certain circumstances, leave to enter or remain is not to lapse on travel outside the common travel area (the Isle of Man, the United Kingdom, Republic of Ireland, the Channel Islands).

Part 1 defines the scope of the Order and the terms used throughout.

Part 2 specifies that an entry clearance which satisfies the requirements of the articles under this Part, is to have effect as leave to enter the Isle of Man. The extent and conditions of this leave, as well as consequential provisions are also set out under the articles of this Part.

Part 3 sets out the form and manner of giving and refusing leave to enter the Isle of Man.

Part 4 provides the circumstances in which leave to enter or remain in the Isle of Man will not lapse on leaving the common travel area. It confers consequential powers on immigration officers and the Minister to cancel or vary leave, which remains in force as a result of this Part.