

2020 No. 1214

IMMIGRATION

The Immigration (Isle of Man) (Amendment) Order 2020

Made - - - - *11th November 2020*

Coming into force in accordance with article 1

At the Court at Windsor Castle, the 11th day of November 2020

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred by section 36 of the Immigration Act 1971(a), section 12(5) of the Immigration Act 1988(b), section 170(7) of the Immigration and Asylum Act 1999(c), section 163(4) of the Nationality, Immigration and Asylum Act 2002(d), section 49(3) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(e), section 60(4) of the UK Borders Act 2007(f), and section 76(6) of the Immigration Act 2014(g), is pleased, by and with the advice of Her Privy Council, to order as follows.

Citation and commencement

1. This Order may be cited as the Immigration (Isle of Man) (Amendment) Order 2020 and comes into force on IP completion day.

Interpretation of this Order

2. In this Order—

“IP completion day” has the same meaning as in the European Union (Withdrawal Agreement) Act 2020(h);

“the principal Order” means the Immigration (Isle of Man) Order 2008(i).

(a) 1971 c. 77, section 36 was extended by section 53(5) of the British Nationality Act 1981 (c. 61) and by section 12(5) of the Immigration Act 1988 (c. 14).

(b) 1988 c. 14.

(c) 1999 c. 33.

(d) 2002 c. 41.

(e) 2004 c. 19.

(f) 2007 c. 30. Relevant modifications are made by section 95(6) and (7) of the Immigration Act 2016 (c.19) and section 182(7) of the Policing and Crime Act 2017 (c.3).

(g) 2014 c. 22.

(h) 2020 c.1.

(i) S.I. 2008/680. Relevant amendments are made by S.I. 2011/1158, S.I. 2011/1408, S.I. 2015/1765, S.I. 2016/156, S.I. 2016/755, and S.I. 2019/562.

Amendment of the principal Order

3. The principal Order is amended in accordance with articles 4 to 12.

Amendment of article 21A

4. After article 21A(2)(k) (extension of the UK Borders Act 2007 to the Isle of Man)(a) insert—
“(ka) section 30 (facilitation: territorial application);”.

Amendment of article 22

5. For article 22(2) (extension of the Immigration Act 2014 to the Isle of Man) substitute—
“(2) The provisions are—
(a) section 1 (removal of persons unlawfully in the United Kingdom);
(b) section 8 (provision of biometric information with immigration applications);
(c) section 11 (biometric immigration documents);
(d) section 12 (meaning of “biometric information”) and Schedule 2 (which supplements that section by consequentially amending other enactments);
(e) section 13 (safeguards for children);
(f) section 14 (use and retention of biometric information);
(g) section 55 (meaning of “sham marriage” and “sham civil partnership”);
(h) section 68 (fees);
(i) section 69 (fees orders and fees regulations: supplemental);
(j) section 70 (power to charge fees for attendance services in particular cases).”.

Amendment of Schedule 3

6.—(1) Schedule 3 (which sets out the modifications subject to which the Immigration Act 1971 extends to the Isle of Man) is amended as follows.

- (2) In paragraph 2, after sub-paragraph (3) insert—

“(4) In subsection (2), for “and section 5(2)” substitute “, section 5(2) and section 25”.”.

- (3) In paragraph 15—

- (a) after sub-paragraph (1) insert—

“(1A) In the heading, for “international obligations” substitute “certain instruments”.”;

- (b) for sub-paragraph (2C) substitute—

“(2C) For subsection (4) substitute—

“(4) “Excluded person” means a person—

- (a) named by or under, or of a description specified in, an instrument falling within subsection (5); or
(b) who, under regulations under section 1 of the Sanctions and Anti-Money Laundering Act 2018 (referred to in this section as “the 2018 Act”) (as that section has effect in the United Kingdom), is an excluded person for the purposes of this section as it has effect in the United Kingdom (see section 4 of the 2018 Act as it has effect there).”.”;

- (c) in sub-paragraph (3A), for the text of inserted subsection (5A)(b) substitute—

“(b) the person is within subsection (4)(a) and not within subsection (4)(b) and has been exempted from the application of subsection (1),(2) or (3), as the case may be,

(a) Article 21A was inserted by article 8 of SI 2019/562.

under a process applying by virtue of the instrument falling within subsection (5).”

- (4) In paragraph 21—
- (a) after sub-paragraph (1) insert—
- “(1A) In the heading, after “member State” insert “or the United Kingdom”.
- (1B) In subsection (1)—
- (a) in each place where it appears, for “not” substitute “neither”; and
- (b) in each place where it appears, after “citizen of the European Union” insert “nor a national of the United Kingdom”.
- (1C) In subsection (2)—
- (a) after “member State” insert “or the United Kingdom”;
- (b) after “of the State” insert “or, as the case may be, of the United Kingdom”;
- (c) in paragraphs (a), (b) and (c), after “the State” insert “or the United Kingdom”.
- (1D) After subsection (2), insert—
- “(2A) In subsections (1) and (2), “national of the United Kingdom” means—
- (a) a British citizen;
- (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981(a) and who has the right of abode in the United Kingdom; or
- (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.”;
- (b) for sub-paragraph (2) substitute—
- “(2) For subsection (4) substitute—
- “(4) Subsection (1) applies to things done whether inside or outside the Isle of Man.”;
- (c) for sub-paragraph (4) substitute—
- “(4) In subsection (7)—
- (a) in paragraph (a), for the words from “a State” to the end substitute “Norway or Iceland”; and
- (b) in paragraph (b), for “a State on that list”, substitute “Norway or Iceland”.
- (5) In paragraph 24, after sub-paragraph (2) insert—
- “(3) In subsection (9)(a), after “a member State” insert “or the United Kingdom”.

Amendment of Schedule 4

7.—(1) Schedule 4 (which sets out the modifications subject to which the Immigration Act 1988 extends to the Isle of Man) is amended as follows.

- (2) In paragraph 2—
- (a) after sub-paragraph (1) insert—
- “(1A) For the heading, substitute “Rights under retained EU law”.”;
- (b) after sub-paragraph (2)(b) insert—
- “(c) for the words from “an enforceable EU right” to the end substitute—
- “—
- (a) a retained enforceable EU right;

(a) 1981 c. 61.

- (b) any provision made under section 2B of the European Communities (Isle of Man) Act 1973 (an Act of Tynwald)(a) as that provision is modified from time to time; or
 - (c) any provision made under section 2(2) of the European Communities Act 1972 (of Parliament)(b) as that provision is modified from time to time.”.”;
- (c) after sub-paragraph (2) insert—
- “(2A) After subsection (1) insert—
- “(1A) In this section, “retained enforceable EU right” means a right that was created or arose by or under the EU Treaties before the coming into force of this subsection, and—
- (a) forms part of retained EU law (within the meaning of the European Union and Trade Act 2019 (an Act of Tynwald)(c) by virtue of section 7 or 8 of that Act; or
 - (b) forms part of retained EU law (within the meaning of the European Union (Withdrawal) Act 2018 (of Parliament)) by virtue of section 3 or 4 of that Act,
- as that right is modified from time to time.”.”.

Amendment of Schedule 6

8.—(1) Schedule 6 (which sets out the modifications subject to which the Immigration and Asylum Act 1999 applies to the Isle of Man) is amended as follows.

(2) For paragraph 1 substitute the following—

“**1.**—(1) Section 10 of the of the 1999 Act(d) is modified as follows.

(2) In the heading and wherever occurring, for “United Kingdom” substitute “Isle of Man”.

(3) For “Secretary of State” wherever occurring substitute “Minister”.

(4) In subsection (5), for the words from “an enforceable EU right” to the end, substitute—

“—

- (a) a retained enforceable EU right;
- (b) any provision made under section 2B of the European Communities (Isle of Man) Act 1973 (an Act of Tynwald) as that provision is modified from time to time; or
- (c) any provision made under section 2(2) of the European Communities Act 1972 (of Parliament) as that provision is modified from time to time.”.

(5) After subsection (5), insert—

“(5A) In this section, “retained enforceable EU right” means a right that was created or arose by or under the EU Treaties before the coming into force of this subsection, and—

- (a) forms part of retained EU law (within the meaning of the European Union and Trade Act 2019 (an Act of Tynwald)) by virtue of section 7 or 8 of that Act; or

(a) 1973 AT14.
 (b) 1972 c. 68.
 (c) 2019 AT2.
 (d) Section 10 was substituted by section 1 of the Immigration Act 2014 (c.22).

- (b) forms part of retained EU law (within the meaning of the European Union (Withdrawal) Act 2018 (of Parliament)) by virtue of section 3 or 4 of that Act,
as that right is modified from time to time.”.
- (3) In paragraph 6, for sub-paragraph (6), substitute—
 - “(6) In subsection (5)(c), in sub-paragraphs (i) and (ii) for “United Kingdom” substitute “Isle of Man”.”.
- (4) In paragraph 6, after sub-paragraph (6) insert—
 - “(7) In subsection (5) —
 - (a) in the definition of “relevant national”, in paragraph (b), omit “other than the United Kingdom”;
 - (b) omit the definition of “United Kingdom immigration law”.”.
- (5) In paragraph 6A(a), in the text of the inserted section 24A—
 - (a) for subsection (5), substitute—
 - “(5) A civil partnership (whether or not it is void) is a “sham civil partnership” if—
 - (a) either, or both, of the parties to the civil partnership is not a relevant national,
 - (b) there is no genuine relationship between the parties to the civil partnership, and
 - (c) either, or both, of the parties to the civil partnership enter into the civil partnership for one or more of these purposes—
 - (i) avoiding the effect of one or more provisions of Isle of Man immigration law or the immigration rules;
 - (ii) enabling a party to the civil partnership to obtain a right conferred by that law or those rules to reside in the Isle of Man.”; and
 - (b) in subsection (5A)—
 - (i) in the definition of “relevant national” in paragraph (b), omit “other than the United Kingdom”; and
 - (ii) omit the definition of “United Kingdom immigration law”.

Amendment of Schedule 7

9.—(1) Schedule 7 (which sets out the modifications subject to which the Nationality, Immigration and Asylum Act 2002 extends to the Isle of Man) is amended as follows.

- (2) In paragraph 31, after sub-paragraph (1) insert—
 - “(1A) In subsection (1), for “any of the EU treaties” substitute “retained EU law”.”.
- (3) In paragraph 35, after sub-paragraph (3) insert—
 - “(3A) In subsection (2)(e)—
 - (a) for the words from “an enforceable EU right” to the end, substitute—
 - “—
 - (i) a retained enforceable EU right;
 - (ii) any provision made under section 2B of the European Communities (Isle of Man) Act 1973 (an Act of Tynwald) as that provision is modified from time to time; or
 - (iii) any provision made under section 2(2) of the European Communities Act 1972 (of Parliament) as that provision is modified from time to time.”.

(a) Paragraph 6A was amended by paragraph 5C of Article 13 of S.I. 2019/562.

(3B) After subsection (2) insert—

“(2A) In this section, “retained enforceable EU right” means a right that was created or arose by or under the EU Treaties before the coming into force of this subsection, and—

- (a) forms part of retained EU law (within the meaning of the European Union and Trade Act 2019 (an Act of Tynwald)) by virtue of section 7 or 8 of that Act; or
- (b) forms part of retained EU law (within the meaning of the European Union (Withdrawal) Act 2018 (of Parliament)) by virtue of section 3 or 4 of that Act,

as that right is modified from time to time.”.”.

Amendment of Schedule 8

10.—(1) Schedule 8 (which sets out the modifications subject to which the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 extends to the Isle of Man) is amended as follows.

(2) In paragraph 1, after sub-paragraph (3) insert—

“(3A) In subsections (4)(b) and (5)(b), for “the EU Treaties” substitute “retained EU law”.”.

Amendment of Schedule 9ZA

11.—(1) Schedule 9ZA(a) (which sets out the modifications subject to which the UK Borders Act 2007 extends to the Isle of Man) is amended as follows.

(2) After paragraph 11, insert the following paragraph—

“**11A.**—(1) Section 30 of the 2007 Act is modified as follows.

(2) In the text to be substituted for section 25(4) and (5) of the 2007 Act, for “United Kingdom” substitute “Isle of Man”.”.

Amendment of Schedule 9A

12.—(1) Schedule 9A(b) (which sets out the modifications subject to which the Immigration Act 2014 extends to the Isle of Man) is amended as follows.

(2) At the beginning of the Schedule insert the following paragraph—

“**ZA1.**—(1) Section 1 of the 2014 Act is modified as follows.

(2) In the text to be substituted for section 10 of the 1999 Act—

- (a) in the heading and wherever occurring, for “United Kingdom” wherever occurring substitute “Isle of Man”;
- (b) for “Secretary of State” wherever occurring substitute “Minister”;
- (c) for “section 2(2) of the European Communities Act 1972” substitute “Section 2B of the European Communities (Isle of Man) Act 1973 (an Act of Tynwald) or section 2(2) of the European Communities Act 1972 (of Parliament)”;
- (d) in subsection (9) omit paragraphs (e) and (f).”.

(3) After paragraph A4 insert—

“**A5.**—(1) Section 55 of the 2014 Act is modified as follows.

(a) Schedule 9ZA was inserted by Article 17 of 2019/562.

(b) Schedule 9A was amended by Article 18 of 2019/562.

(2) In the text of the substituted section of 24(5)(c) of the 1999 Act (duty to report suspicious marriages), in paragraphs (i) and (ii), for “United Kingdom” substitute “Isle of Man”.

(3) In the text of inserted section 24(6) of the 1999 Act—

(a) in the definition of “relevant national”, in paragraph (b), omit “other than the United Kingdom”; and

(b) omit the definition of “United Kingdom immigration law”.

(4) In the text of the substituted section 24A(5)(c) of the 1999 Act (duty to report suspicious civil partnerships), in paragraphs (i) and (ii), for the “United Kingdom” substitute “Isle of Man”.

(5) In the text of inserted section 24A(5A) of the 1999 Act—

(a) in the definition of “relevant national”, in paragraph (b), omit “other than the United Kingdom”; and

(b) omit the definition of “United Kingdom immigration law”.

Savings and transitional provision

13.—(1) The amendment made by article 9(2) does not affect—

(a) the power in section 109 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) as modified by paragraph 31 of Schedule 7 to the principal Order to make regulations which provide for, or make provision about, an appeal against an immigration decision taken before IP completion day; or

(b) the operation of any regulations made under that section before IP completion day in relation to such an appeal.

(2) The amendment made by article 9(3) does not affect the operation of any regulations made under section 126 of the 2002 Act as modified by paragraph 35 of Schedule 7 to the principal Order before IP completion day in relation to an application for a document referred to in section 126(2)(e) of the 2002 Act.

(3) In sub-paragraph (1)(a), “immigration decision” has the meaning given by section 109 of the 2002 Act as it had effect before IP completion day.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Immigration (Isle of Man) Order 2008 (S.I. 2008/680). It makes amendments to Isle of Man immigration legislation which are equivalent to amendments previously made to UK immigration legislation, thus maintaining the Isle of Man’s integrated approach to immigration policy with the United Kingdom.

The effect of these amendments is principally to ensure that the offence of facilitating illegal immigration is maintained when the United Kingdom leaves the European Union; to clarify the conditions to be met for the removal of family members from the Isle of Man of a person who has no right of abode in the Isle of Man; to amend the definitions of “sham marriage” and “sham civil partnership”; and to give a definition of a “retained enforceable EU right”.

This Order also makes saving and transitional provisions in relation to immigration and nationality.

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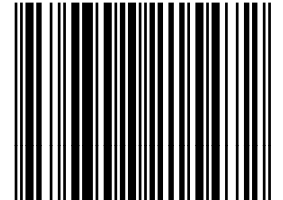
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