



Statutory Document No. 172/08

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

IMMIGRATION (LEAVE TO ENTER AND REMAIN) ORDER 2008

Laid before Tynwald

15th April 2008

Coming into operation

1st May 2008

In exercise of the powers conferred on the Governor by sections 3A(1), (2), (3), (4), (6) and 10 and 3B(2)(a) and (c) and (3)(a) of the Immigration Act 1971 (an Act of Parliament)¹, as it has effect in the Isle of Man², the following Order is hereby made:—

PART 1

GENERAL

1. Citation, commencement and interpretation

(1) This Order may be cited as the Immigration (Leave to Enter and Remain) Order 2008 and shall come into operation on the 1st May 2008.

(2) In this Order —

"the Act" means the Immigration Act 1971 (an Act of Parliament);

"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;

"the Immigration Acts" has the meaning given by section 64(2) of the Immigration, Asylum and Nationality Act 2006³;

"the Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;

"responsible third party" means a person appearing to an immigration officer to be —

¹ 1971 c.77

² SI 2008/680

³ 2006 c.13

Price £1.50

- (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; 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.

(3) In this Order any reference to an Act of Parliament, or a provision of an Act of Parliament, which extends to the Isle of Man is a reference to that Act or provision as it has effect in the Isle of Man.

PART 2

ENTRY CLEARANCE AS LEAVE TO ENTER

2. Entry clearance as leave to enter

Subject to article 6(3), an entry clearance which complies with the requirements of article 3 shall have effect as leave to enter the Isle of Man to the extent specified in article 4, but subject to the conditions referred to in article 5.

3. Requirements

(1) Subject to paragraph (4), an entry clearance shall have effect as leave to enter only 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 the 1st May 2008 shall have effect as leave to enter.

4. Extent to which entry clearance is to be leave to enter

(1) A visit visa, during its period of validity, shall have effect as leave to enter the Isle of Man on an unlimited number of occasions, in accordance with paragraph (2).

(2) On each occasion the holder arrives in the Isle of Man, he 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) In the case of any other form of entry clearance, 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 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.

(4) In this article "period of validity" means the period beginning on the day on which the entry clearance becomes effective and ending on the day on which it expires.

5. 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.

6. Incidental, supplementary and consequential provisions

(1) Where an immigration officer exercises his power to cancel leave to enter under paragraph 2A(8) of Schedule 2 to the Act or article 13(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 departure for, or in the course of his journey to, the Isle of Man and is refused leave to enter under article 7, the entry clearance shall not have effect as leave to enter.

PART 3

FORM AND MANNER OF GIVING AND REFUSING LEAVE TO ENTER

7. Grant and refusal of leave to enter before arrival in the Isle of Man

(1) An immigration officer, whether or not in the Isle of Man, may give or refuse a person leave to enter the Isle of Man at any time before his departure for, or in the course of his 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.

8. Grant or refusal of leave otherwise than by notice in writing

(1) A notice giving or refusing leave to enter may, instead of being given in writing as required by section 4(1) of the Act, be given as follows.

(2) The notice may be given by facsimile or electronic mail.

(3) In the case of a notice giving or refusing leave to enter the Isle of Man as a visitor, it may be given orally, including by means of a telecommunications system.

(4) In paragraph (3), "leave to enter the Isle of Man as a visitor" means leave to enter as a visitor under the immigration rules for a period not exceeding 6 months, subject to conditions prohibiting employment and recourse to public funds (within the meaning of the immigration rules).

9. 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 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 him.

10. Notice of refusal of leave

(1) Where a notice refusing leave to enter to a person is given under article 8(3) or 9, an immigration officer shall as soon as practicable give to him a notice in writing stating that he 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 delivered, or sent by post to —

- (a) that person's last known or usual place of abode; or
- (b) any address provided by him for receipt of the notice.

11. 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 alleges that he has such leave by virtue of a notice given under article 8(3) or 9, the onus shall lie upon him to show the manner and date of his entry into the Isle of Man.

12. 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 Governor's decision on that claim); and
- (c) upon the completion of those inquiries, an immigration officer considers he is 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 him 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 COMMON TRAVEL AREA

13. Leave which does not lapse on travel outside common travel area

(1) In this article "leave" means —

- (a) leave to enter the Isle of Man (including leave to enter conferred by means of an entry clearance under article 2); 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 2; or
 - (b) given by an immigration officer or the Governor for a period exceeding 6 months,

such leave shall not lapse on his 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 Governor; 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 stayed outside the Isle of Man 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
 - (b) any conditions to which the leave is subject shall be suspended for such time as the holder is outside the Isle of Man.
- (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 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 Governor 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 Governor.
- (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 Governor 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 Governor 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.

PART 5

CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

14. Modification of section 9(2) of Act

Section 9(2) of the Act (further provisions as to 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".

15. Transitional provisions

(1) Article 12 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.

(2) Article 13 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.

MADE 19th March 2008



Lieutenant Governor

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 United Kingdom, the Republic of Ireland, the Channel Islands and the Isle of Man).

In Part 2, article 2 provides that an entry clearance (including a visa) which satisfies the requirements specified in article 3 is to have effect as leave to enter the Isle of Man. The extent of that leave is set out in article 4. Article 5 deals with the conditions to which it is subject. Consequential provision is made in article 6 to enable Immigration Officers to cancel entry clearances in certain circumstances.

Part 3 makes further provision as to the form and manner of giving and refusing leave to enter the Isle of Man. Article 7 provides that leave to enter may be given or refused before a person arrives in the Isle of Man. It gives Immigration Officers powers to seek information necessary to come to a decision as to whether or not to give leave. Article 8 provides that, instead of being given in writing, a notice giving or refusing leave to enter the Isle of Man may be given by facsimile, electronic mail or, in the case of those given leave as visitors under the immigration rules, orally. Article 9 provides that a notice giving or refusing leave to enter to a person may be given through a responsible third party acting on his behalf. Where notice of refusal of leave to enter is given orally or through a third party, article 10 requires an Immigration Officer to serve an additional written notice stating the reasons for refusal. Article 11 requires persons claiming that they have been given leave to enter orally or through a third party to prove the manner and date of their entry into the Isle of Man. Article 12 enables an immigration officer who has begun but not completed an interview with an arriving passenger to consider whether or not to give him leave to enter to give or refuse leave by post or similar means.

Part 4 (article 13) provides that, in the circumstances specified, leave to enter or remain in the Isle of Man will not lapse on the holder leaving the common travel area. It confers consequential powers on immigration officers and the Governor to cancel or vary leave, which thus remains in force.

Part 5 (articles 14 and 15) makes transitional and consequential provision.