



Statutory Document No. 181/08

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

IMMIGRATION (NOTICES) REGULATIONS 2008

Laid before Tynwald

15th April 2008

Coming into operation

1st May 2008

In exercise of the powers conferred on the Governor by sections 105 and 112(1) and (3) of the Nationality, Immigration and Asylum Act 2002 (an Act of Parliament)¹, as it has effect in the Isle of Man², the following Regulations are hereby made:—

1. Citation and commencement

These Regulations may be cited as the Immigration (Notices) Regulations 2008 and shall come into operation on the 1st May 2008.

2. Interpretation

(1) In these Regulations —

"the 1971 Act" means the Immigration Act 1971 (an Act of Parliament)³;

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002 (an Act of Parliament);

"decision-maker" means —

- (a) the Governor;
- (b) an immigration officer;
- (c) an entry clearance officer;

"entry clearance officer" means a person responsible for the grant or refusal of entry clearance;

"immigration decision" has the meaning given by section 82(2) of the 2002 Act;

"notice of appeal" means a notice of appeal to an adjudicator in accordance with the Procedure Rules;

"the Procedure Rules" means the rules for the time being in force under section 106(l) of the 2002 Act;

¹ 2002 c.41

² SI 2008/680

³ 1971 c.77

Price £1.00

"representative" means a person who appears to the decision-maker to be the representative of a person referred to in regulation 3(1).

- (2) Any reference in these Rules to —
 - (a) an enactment which extends to the Isle of Man, or
 - (b) a provision of any such enactment,

shall be construed as a reference to that enactment or provision as it has effect in the Isle of Man.

3. Notice of decisions

(1) Subject to regulation 5, the decision-maker must give written notice to a person of any immigration decision taken in respect of him which is appealable.

(2) If the notice is given to the representative of the person, it is to be taken to have been given to the person.

4. Contents of notice

- (1) A notice given under regulation 3(1) —
 - (a) must include or be accompanied by a statement of the reasons for the decision to which it relates; and
 - (b) if it relates to an immigration decision specified in section 82(2)(a), (g), (h), (i), (ia) or (j) of the 2002 Act —
 - (i) must state the country or territory to which it is proposed to remove the person; or
 - (ii) may, if it appears to the decision-maker that the person to whom the notice is to be given may be removable to more than one country or territory, state any such countries or territories.

(2) Subject to paragraph (5), the notice given under regulation 3 must also include, or be accompanied by, a statement which advises the person of —

- (a) his right of appeal and the statutory provision on which his right of appeal is based;
- (b) whether or not such an appeal may be brought while in the Isle of Man;
- (c) the grounds on which such an appeal may be brought; and
- (d) the facilities available for advice and assistance in connection with such an appeal.

(3) Subject to paragraph (5), the notice given under regulation 3 must be accompanied by a notice of appeal which indicates the time limit for bringing the appeal, the address to which it should be sent or may be taken by hand and a fax number for service by fax.

(4) Subject to paragraph (5), where the exercise of the right is restricted by an exception or limitation by virtue of a provision of Part 5 of the 2002 Act (immigration appeals), the notice given under regulation 3 must include or be accompanied by a statement which refers to the provision limiting or restricting the right of appeal.

(5) The notice given under regulation 3 need not comply with paragraphs (2), (3), and (4) where a right of appeal may only be exercised on the grounds referred to in section 84(1)(b), (c) or (g) of the 2002 Act by virtue of the operation of section 88(4), 90(4), 91(2) or 98(4) or (5) of that Act.

(6) Where notice is given under regulation 3 and paragraph (5) applies, if the person claims in relation to the immigration decision that —

- (a) the decision is unlawful by virtue of section 1 of the Race Relations Act 2004 (an Act of Tynwald)⁴ (discrimination by public authorities);
- (b) the decision is unlawful under section 6 of the Human Rights Act 2001 (an Act of Tynwald)⁵ (public authority not to act contrary to the Human Rights Convention) as being incompatible with the person's Convention rights; or
- (c) removal of the person from the Isle of Man in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention, or would be unlawful under section 6 of the Human Rights Act 2001 as being incompatible with the person's Convention rights,

the decision-maker must as soon as practicable re-serve the notice of decision under regulation 3 and paragraph (5) of this regulation shall not apply.

(7) Where a notice is re-served under paragraph (6), the time limit for appeal under the Procedure Rules shall be calculated as if the notice of decision had been served on the date on which it was re-served.

5. Certain notices under 1971 Act deemed to comply with Regulations

- (1) This regulation applies where the power to —
 - (a) refuse leave to enter; or
 - (b) vary leave to enter or remain in the Isle of Man;

is exercised by notice in writing under section 4 (administration of control) of, or paragraph 6(2) (notice of decisions of leave to enter or remain) of Schedule 2 to, the 1971 Act.

- (2) If —
 - (a) the statement required by regulation 4(2) is included in or accompanies that notice; and
 - (b) the notice is given in accordance with the provisions of regulation 6;

the notice shall be taken to have been given under regulation 3(1) for the purposes of these Regulations.

6. Service of notice

- (1) A notice required to be given under regulation 3 may be —
 - (a) given by hand;

⁴ 2004 c.6

⁵ 2001 c.1

- (b) sent by fax;
- (c) sent by a postal service in which delivery or receipt is recorded to —
 - (i) an address provided for correspondence by the person or his representative; or
 - (ii) where no address for correspondence has been provided by the person, the last known or usual place of abode or place of business of the person or his representative.
- (2) Where —
 - (a) a person's whereabouts are not known; and
 - (b) either —
 - (i) no address has been provided for correspondence and the decision-maker does not know the last known or usual place of abode or place of business of the person; or
 - (ii) the address provided to the decision-maker is defective, false or no longer in use by the person; and
 - (c) no representative appears to be acting for the person, and

the notice shall be deemed to have been given when the decision-maker enters a record of the above circumstances and places the signed notice on the relevant file.

(3) Where a notice has been given in accordance with paragraph (2) and then subsequently the person is located, he shall be given a copy of the notice and details of when and how it was given as soon as is practicable.

(4) Where a notice is sent by post in accordance with paragraph (1)(c) it shall be deemed to have been served, unless the contrary is proved —

- (a) where the document is sent by post to a place within the Isle of Man or the United Kingdom, on the second business day after it was sent;
- (b) where the document is sent by post to a place outside the Isle of Man and the United Kingdom, on the 28th day after it was sent.

(5) For the purposes of paragraph (4) —

- (a) the period shall be calculated excluding the day on which the notice is posted;
- (b) "business day" means any day other than Saturday or Sunday, a day which is a bank holiday under the Bank Holidays Act 1989 (an Act of Tynwald)⁶, Christmas Day or Good Friday.

(7) A notice given under regulation 3 may, in the case of a minor who does not have a representative, be given to the parent, guardian or another adult who for the time being takes responsibility for the child.

⁶ 1989 c.5

MADE 19th March 2008



Lieutenant Governor

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision for the giving of notice of decisions relating to immigration.

Regulation 3 requires written notice of any such decision to be given, and regulation 4 requires it to include reasons and a statement of any rights of appeal. Regulation 5 provides that if a notice refusing leave to enter, or varying leave to enter or remain, complies with regulations 4(2) and 6, it is treated as complying with regulation 3. Regulation 6 provides for service of a notice.