
STATUTORY INSTRUMENTS

2014 No.

IMMIGRATION

Immigration (Removal of Family Members) Regulations 2014

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State, in exercise of the powers conferred by section 10(6) of the Immigration and Asylum Act 1999(a), makes the following Regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Immigration (Removal of Family Members) Regulations 2014 and shall come into force on the day after the day on which they are made.

2. In these Regulations—

“the Act” means the Immigration and Asylum Act 1999(b).

“P” means a person who is liable to be or has been removed from the United Kingdom under section 10(1) of the Act.

Members of a person’s family

3.—(1) For the purposes of section 10(2) of the Act, the following shall be regarded as members of P’s family provided they are not British citizens or entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972—

- (a) a person who has leave to enter or remain as P’s partner,
- (b) a person who has leave to enter or remain as P’s dependant,
- (c) a child below the age of 18 for whom P has parental responsibility.

Giving and effect of notice to a family member

4. The Secretary of State or an immigration officer must give written notice to a person of a decision to remove the person under section 10(2) of the Act.

5. A notice given to a person under regulation 4 invalidates any leave to enter or remain in the United Kingdom previously given to the person.

(a) 1999 c.33, as amended by section 1 of the Immigration Act 2014 c.XX.
(b) 1999 c.33, as amended by section 1 of the Immigration Act 2014 c.XX.

- 6.—(1) A notice given to a person under regulation 4 may be given—
- (a) at any time prior to P’s removal,
 - (b) during the period of eight weeks beginning with the date on which P is removed.

Service of notice

- 7.—(1) A notice required to be given under regulation 4 may be—
- (a) given by hand,
 - (b) sent by fax,
 - (c) sent by postal service in which delivery or receipt is recorded to—
 - (i) an address provided for correspondence by the person or the person’s representative, or
 - (ii) where no address for correspondence has been provided, the last-known or usual place of abode or place of business of the person or the person’s representative.
 - (d) sent electronically,
 - (e) sent by document exchange to a document exchange number or address,
 - (f) sent by courier,
 - (g) collected by the person who is the subject of the decision or the person’s representative.

(2) Where—

- (a) a person’s whereabouts are not known, and
- (b) no address is available for correspondence under paragraph (1)(c)

the notice shall be deemed to have been given when the Secretary of State or immigration officer enters a record of the above circumstances and places the signed notice on the relevant file.

(3) Where notice is deemed to have been given in accordance with paragraph (3) and subsequently the person is located, the person is to be given a copy of the notice and details of when and how it was deemed to be served 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, on the second day after it was posted.

(5) For the purposes of paragraph (4) the period is to be calculated—

- (a) excluding the day on which the notice is posted, and
- (b) excluding any day which is not a business day.

(6) In this regulation, “business day” means any day other than Saturday or Sunday, a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom to which the notice is sent, Christmas Day or Good Friday.

(7) A notice required to be given under regulation 4 may, in the case of a child below the age of 18 who does not have a representative, be given to P.

8. The Secretary of State or an immigration officer may give a direction under section 10(3) of the Act in relation to a member of P’s family at the same time as or subsequent to the notice required to be given to the member of P’s family under regulation 4.

Address
Date

Name
Parliamentary Under Secretary of State
Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations make provision under section 10(6) of the Immigration and Asylum Act 1999 (“the 1999 Act”), as amended by section 1 of the Immigration Act 2014, in respect of the removal of the family members of a person who is liable to be or has been removed under section 10(1) of the 1999 Act, as amended. The regulations define who is to be considered a family member for the purposes of removal under section 10(2) of the 1999 Act, as amended. They provide that notice of a decision to remove a family member must be given to that person. They make provision in respect of the timing and effect of such a notice. Finally, they set out how a notice is to be served.

**EXPLANATORY MEMORANDUM TO THE IMMIGRATION (REMOVAL
OF FAMILY MEMBERS) REGULATIONS 2014
2014 No. XX**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Purpose of the Instrument**

- 2.1. The Immigration (Removal of Family Members) Regulations 2014 (“the 2014 Regulations”) make provision about family members who may be removed from the United Kingdom (“the UK”) where the person to whose family they belong requires leave to enter or remain in the UK but does not have it. The 2014 Regulations set out who is a family member for the purpose of removal, a requirement to give the family members notice of removal, the time period within which that notice may be given, the effect that notice has, and the procedure to be followed for serving the notice of removal.

- 2.2. The 2014 Regulations are subject to the negative resolution procedure.

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

- 3.1. None

- 4. Legislative Background**

- 4.1. Section 1 of the Immigration Act 2014 (“the 2014 Act”) replaces section 10 of the Immigration and Asylum Act 1999 (“the 1999 Act”) with a new provision to remove persons unlawfully in the UK. Subsection (2) provides for the removal of family members in accordance with regulations made under subsection (6).

- 4.2. The previous section 10(1)(c) of the 1999 Act provided for the removal of family members, but did not define who was such a person. Paragraph 10A of Schedule 2 to the Immigration Act 1971 also provides for the removal of family members of persons refused leave to enter the UK and illegal entrants, but they too contain no further detail who is a family member. These Regulations will ensure clarity for families so that they will know exactly who may be liable to removal

- 5. Territorial Extent and Application**

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. Mark Harper MP, the Immigration Minister, has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (Removal of Family Members) Regulations 2014 are compatible with the Convention rights.

7. Policy background

What is being done and why?

7.1. The policy objective is to ensure that there is clarity on who constitutes a family member for the purpose of removal from the UK, when they can be removed and what the process is for notifying family members of removal.

7.2. These details are best placed in the 2014 Regulation as the definitions of family member or the time limits for removal may change within a limited extent.

Effect of the 2014 Regulations

7.3. For the purpose of removal the 2014 Regulations set out who shall be regarded as members of a person's family. This does not include persons who are British citizens or nationals of the European Economic Area exercising treaty rights in the UK. Otherwise it follows the same categories of relationship that could allow people to get leave to enter or remain under the immigration rules so that family members for removal purposes are the same as for incoming purposes.

7.4. The 2014 Regulations also provide that family members must be given written notice of removal, the effect that notification has in invalidating any leave to enter or remain, and the timing of when that notice may be given. This replicates the provisions that were previously in statute for the removal of family members under section 10 of the 1999 Act.

8. Consultation outcome

8.1. There has not been a formal public consultation exercise, but interested parties were offered an opportunity to comment on the amendments to section 10 of the 1999 Act during the passage of the Immigration Bill. Evidence regarding removal and family members was provided by:

- Immigration Law Practitioners' Association;
- The International Organization for Migration;

- Liberty.

8.2. There was concern that detail on the removal of family members was not on the face of the legislation, and that family members may be removed without first receiving notice of the removal. Draft Regulations addressing these points were provided during the passage of the Bill.

9. Guidance

- 9.1. The Home Office produces guidance on immigration decisions and family removals which is available on the website at <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/>.
- 9.2. The guidance is updated as required to reflect changes to legislation, policy and procedure.

10. Impact

- 10.1. The impact on business, charities or voluntary bodies is nil.
- 10.2. The impact on the public sector is nil.
- 10.3. A Regulatory Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1. The legislation does not apply to small business.

12. Monitoring & review

- 12.1. The Home Office will keep the 2014 Regulations continually under review.

13. Contact

- 13.1. Julia Dolby at the Home Office can be contacted with queries regarding this instrument, at Julia.Dolby@homeoffice.gsi.gov.uk or 020 7035 0408.