



Home Office

## **UK Borders Act 2007:**

Code of Practice about the sanctions for non-compliance with the biometric registration regulations

July 2023



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Any enquiries regarding this publication should be sent to us:

John Allen (Visits Identity Trade Policy and Enablers)  
Home Office  
2<sup>nd</sup> Floor,  
2 Marsham Street  
London  
SW1P 4DF



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# About this code of practice

## Background

1. The Government is committed to securing the United Kingdom's borders and improving immigration control. An important aspect of this is reducing identity abuse through the use of more secure and easily verified proof of permission to be in the UK (referred to as permission to enter or permission to remain in the UK) and to access the labour market, rental accommodation or public services.
2. A central part of delivering these objectives has been the progressive transition, since 2008, to the use of Biometric Immigration Documents (BID)<sup>1</sup>. In 2008 we started to replace less secure evidence of permission, such as immigration status letters, or ink stamps and stickers or vignettes in travel documents with a physical BID, in the form of the biometric residence permit. We are now transitioning to a digitised format of the BID referred to as an eVisa, which can be accessed online via Gov.UK.
3. We completed the rollout of BIDs in the form of a physical BRP in 2015, to people granted permission to enter or remain in the UK for more than 6 months. In April 2022, we removed the No-Time Limit (NTL)<sup>2</sup> fee to enable holders of legacy immigration documents, such as a vignette or passport endorsement to obtain a physical BRP in preparation to the transition to a digitised status in the form of an eVisa by the end of 2024.
4. Under the UK Borders Act 2007<sup>3</sup>, (the 2007 Act) the Secretary of State may make regulations<sup>4</sup> to require foreign nationals who are subject to immigration control<sup>5</sup> to apply for a BID and, as part of that application, to provide their biometric information<sup>6</sup>, such as a photograph of their face and their fingerprints. This does not apply to people who applied or have been granted status under the EU settlement scheme.
5. If a person does not comply with a requirement of the regulations, the Secretary of State<sup>7</sup> may impose a sanction<sup>8</sup>. This forms part of the overall strategy of ensuring foreign nationals living in the United Kingdom have secure, reliable evidence of their immigration status and comply with any conditions imposed on them.

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<sup>1</sup> References in this Code to a Biometric Immigration Document (BID) include both eVisas and Biometric Residence Permits.

<sup>2</sup> A NTL BID is a document issued to foreign nationals who have settled status and the physical documents cannot be valid beyond 10 years to ensure the holder keeps their facial image updated, BIDs are not issued to foreign nationals granted leave under the EU settlement scheme

<sup>3</sup> Section 7 of the UK Borders Act 2007.

<sup>4</sup> The Immigration (Biometric Registration) Regulations 2008, (the 2008 Regulations).

<sup>5</sup> Except those who apply and are granted permission under the EU settlement scheme or as a Frontier Worker

<sup>6</sup> Section 5(1)(a).

<sup>7</sup> Where it relates to an overseas application, this may be an Entry Clearance officer

<sup>8</sup> Regulation 23 of the 2008 Regulations.

## Legal requirements

6. The 2007 Act requires the Secretary of State to issue a Code of Practice<sup>9</sup> about the matters which the Secretary of State must consider when determining whether to issue a civil penalty notice. The Act also requires the Secretary of State to publish proposals, consult members of the public, and lay a draft of the Code before Parliament before issuing or re-issuing it.

7. The Act provides that the relevant civil courts (the County Court in England, Wales and Northern Ireland, and the Sheriff Court in Scotland) must take the Code into account when considering any appeal against the issue of a civil penalty under section 11 of the 2007 Act.

8. This Code of Practice is an important document which will be relevant to a person who is issued with a sanction under the 2007 Act, and their representatives and legal advisers. It will also be used by decision making staff in the Home Office, and by the civil courts.

9. This Code updates the one issued in 2015<sup>10</sup> and reflects the transition from physical to digital documents in the form of the eVisa. BIDs will be issued digitally. They can be accessed by the immigration status holder over Gov.UK<sup>11</sup>, but in the future they may be accessible via an App or contained within a digital wallet.

## Summary of the requirements

10. All foreign nationals who are subject to immigration control must comply with the relevant requirements of the Immigration (Biometric Registration) Regulations 2008 (the 2008 Regulations).

11. The requirements are divided into two categories relating to; application and maintenance. A breach of any relevant requirement may result in the imposition of a sanction.

12. Application requirements are those which form an essential part of the application process for a BID. They require a person to:

- apply for a BID when required to do so by the 2008 Regulations, where the person is also applying for new permission to enter or stay in the UK;
- surrender any requested documents connected with immigration or nationality when required as part of the permission application and issue of a BID; and
- follow any process specified by an authorised person in respect of the particular application that has been made, including providing by a specified date a record of their fingerprints and photograph of their face.

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<sup>9</sup> Section 13(1).

<sup>10</sup> [Non-compliance with the biometric registration regulations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/non-compliance-with-the-biometric-registration-regulations)

<sup>11</sup> [View and prove your immigration status: get a share code - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/view-and-prove-your-immigration-status-get-a-share-code)

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13. Maintenance requirements are those which apply after permission has been granted. They require a person to:

- apply for a BID, where the person already has valid permission to enter or stay in the UK, when required to do so by the regulations;
- collect a physical BID when issued
- update a facial image that has either significantly changed following surgery or for some other reason,
- update their facial image at least once every 10 years (or 5 years if aged under 16) from the date they last uploaded their facial image.
- notify the Secretary of State when they suspect that the information provided in connection with their application for a BID was or has become false, misleading or incomplete;
- notify the Secretary of State when they suspect their BID to be used by a person who has not been authorised by them or the Secretary of State
- comply with other requirements specified in the 2008 Regulations; or
- surrender to the Secretary of State when required to do so any physical BID in the person's possession.

## Summary of the types of sanctions

14. If a person does not comply with a requirement of the 2008 Regulations, the Secretary of State must consider whether the person has failed to comply with either an application or a maintenance requirement, as this will determine the types of sanction the Secretary of State may impose.

15. Where the Secretary of State considers a person has failed to comply with one or more of the application requirements the sanctions the Secretary of State may impose are:

- the refusal or rejection as invalid of a person's application for permission to enter or remain in the UK; and
- a refusal to issue the person with a BID<sup>12</sup>

## Create a Share-Code

16. Where the person appears to have failed to comply with a requirement to update a facial image, the Secretary of State may prevent the individual from being able to create a Share-Code to share with third-party checkers, or allow for a message to be displayed alongside the person's facial image to indicate it needs to be updated until they have complied with the requirement, unless the non-compliance continues or is linked to failures to comply with other maintenance requirements or criminality.

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<sup>12</sup> For the purpose of this Code disregarding an application has the same meaning as an application being treated as invalid under the Immigration Rules.



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17. Where the person appears to have failed to comply with one or more of the maintenance requirements the Secretary of State may consider whether to impose one or more of the following sanctions<sup>13</sup>:

- a refusal to issue a BID;
- a financial sanction in the form of a civil penalty notice; and
- the cancellation or variation by curtailment of a person's existing leave to enter or remain in the UK.

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<sup>13</sup> Regulation 23 of the Immigration (Biometric Registration) Regulations 2008 (as amended).

# Application Requirements

## Process before issuing an application sanction

18. The person will be told the date by when they must complete the application requirements, which will vary depending on the type of application being made. The applicant is expected to comply with any of the application requirements within this period or face having their application disregarded<sup>14</sup>.

19. The Secretary of State will send a written notification to the person to remind them about any outstanding actions they need to complete before the date they are expected to complete the application process.

## Content of application notification

20. An application notification will tell the person about any required actions they must complete to enable their application to be treated as valid, including any of the application requirements such as enrolling their biometric information.

21. Where a person is making an application for entry clearance from overseas and consider they are unable to comply with the application requirements, they must contact the Home Office at the time they submit their application or otherwise withdraw their application and submit a new application, so they can contact the Home Office about their circumstances.

22. Where a person is making an application for permission for entry or remain and is located in the UK and consider they cannot comply with an application requirement they must contact the Home Office before the time they are required to complete the application requirements about their circumstances. Unless they can evidence their circumstances prevents them from complying with the requirements, such as the person needing to stay in hospital having received emergency medical treatment, they will be expected to comply with all the application requirements within the allotted timeframe.

## Consequences for failing to comply with an application requirement

23. Where the person fails to comply with one or more of the application requirements within the time they must complete their application, including any requirement to book an appointment and attend an event to enrol biometrics, the Secretary of State will disregard their application and refund the fee, less set administrative charges. The Secretary of State will also not issue the person with a BID.

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<sup>14</sup> This means the same as treated invalid under the Immigration Rules

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24. No other type of sanction will be imposed on the person for failing to comply with an application requirement. The applicant will be free to make further applications for permission.

## **Stateless persons**

25. The Secretary of State may treat an application for permission as a “Stateless Person”<sup>15</sup> as invalid where the person has failed to comply with an application requirement of the regulations.

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<sup>15</sup> See part 14 of the Immigration Rules - [Immigration Rules - Immigration Rules part 14: stateless persons - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/immigration-rules-immigration-rules-part-14-stateless-persons-guidance)

# Maintenance requirements

## Process before issuing a maintenance sanction

26. Where a Secretary of State considers a person to have failed to comply with one or more of the maintenance requirements, they must consider the extent of the non-compliance.

## Updating facial image

27. Where the non-compliance relates to the person failing to update their facial image within 10 years, or 5 years where the person is aged under 16, from when it was last updated, the normal sanction that will be imposed is to prevent the person from creating a “Share-Code”<sup>16</sup> necessary to enable them to share their status with a third-party checker.

28. The Secretary of State must issue a notification to the person, in a format that reflects the person’s circumstances. In most cases, this can be in the form of a digitised notification. It must set out the steps they must undertake to enable them to comply with the requirement to update their facial image and the consequences for not doing so.

29. Where the failure to update a facial image is linked to other non-compliance with one or more of the maintenance requirements or is linked to criminality the Secretary of State may also consider imposing additional or other sanctions, on top of preventing the person from creating a Share-Code.

## Following the issue of a facial image notification

30. The Secretary of State will automatically impose the sanction without further recourse to the person. However, the Secretary of State must ensure there are adequate arrangements in place to enable the person to comply with the mandatory notification.

31. Where the person complies with the mandatory notification the Secretary of State will cancel the sanction as soon as practicable.

## Other maintenance requirements sanctions

32. The Secretary of State will only consider imposing a maintenance sanction if they are satisfied a person has failed, without a reasonable excuse, to comply with one or more of the maintenance requirements of the regulations. Where the non-compliance with the

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<sup>16</sup> A Share-Code is a unique reference generated by the status holder which they can email or hand-over to a third party checker, such as an employer, landlord or another organisation that needs to check identity and status

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requirement to update a facial image is linked to other non-compliance or criminality, the Secretary of State may impose additional or other sanctions.

### **Process before issuing other maintenance sanctions**

33. Where the Secretary of State intends to issue a maintenance sanction following non-compliance with one of the maintenance requirements on the person the Secretary of State must consider the types of sanction to impose, taking account of the person's circumstances, including whether they have limited or indefinite permission to enter or remain in the UK.

34. The Secretary of State must consider the seriousness of the breach before imposing a sanction. The Secretary of State will only consider issuing a civil penalty or to vary or cancel the person's permission to enter or stay in the UK in the most serious instances of non-compliance with the maintenance requirements.

35. In most cases, the Secretary of State may cancel a BID where they know the information to be inaccurate and will refuse to issue a BID until they are satisfied that information to be displayed on the BID is accurate.

36. Where the Secretary of State has cancelled a BID, they cannot issue the person with a BID, which acts as evidence of their permission and can be used for identification purposes, until they apply for the BID and comply with the specified biometric information recording processes.

37. The Secretary of State will only impose a civil penalty or to vary or cancel the person's permission to enter or stay in the UK in the most serious failure to comply with a requirement of regulations, where preventing the person from creating a Share-Code or refusing to issue a BID is not appropriate.

38. Before the Secretary of State can issue a civil penalty or vary or cancel the person's permission to enter or stay in the UK, they must issue the person with a warning letter.

### **Content of maintenance requirement warning letter**

39. The warning letter will set out the reasons why the Secretary of State considers the person has not complied with the requirements of the regulations and what action may be taken, and will outline how the person may avoid a sanction being imposed provided they:

- respond within the "warning period", specified in the warning letter or if given orally on the same day the officer acting on behalf of the Secretary of State issued it to the person; and
- provide an acceptable explanation as to why they were unable to comply and demonstrate that compliance will take place as soon as is practically possible; or
- allow the Secretary of State to put into place special arrangements to enable the person to comply; or
- provide satisfactory evidence which explains why they are unable to comply.

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40. The warning letter must also set out the type of consequence the person is likely to face if they continue to fail to comply.

### Following the issuing of a maintenance requirement warning letter

41. The Secretary of State **will not** proceed to impose a sanction until the warning period either stated in the letter has ended or if the notice was issued orally in person by an officer acting on behalf of the Secretary of State, as soon as they are satisfied the person does not intend to comply with the requirement.

42. If after 90 calendar days following the beginning of the warning period or a time set out in the warning letter, the Secretary of State has neither issued the person with a civil penalty or made a decision to vary or cancel their immigration permission, no further action will be taken in respect of that particular incident of non-compliance.

# Civil penalties

## Process for issuing a civil penalty

43. If the Secretary of State decides to issue the person with a civil penalty notice, the person will have the right to make a written objection, which must be received by the Secretary of State within the “objection period”. This is 32 working days beginning with the date of the civil penalty notice. The person will also have a right of appeal to the relevant civil court against the Secretary of State’s decision to issue a civil penalty notice.

44. If the Secretary of State decides to impose an immigration sanction, the person may have a right of appeal against that decision under the Nationality, Immigration and Asylum Act 2002.

45. The Secretary of State may consider imposing a financial sanction in the form of a civil penalty notice following a failure to comply with a requirement where the person:

- failed to update their facial image following a change in appearance, or after 10 years (or 5 years if aged under 16) from the last time they uploaded their facial image;
- has existing permission and the Secretary of State has decided not to impose an immigration sanction for that failure to comply;
- has applied for a Home Office travel document but has failed to apply for a BID;
- has been granted permission but has failed to register for a customer account to enable the Secretary of State to issue a BID;
- failed to provide accurate data to enable the issue of a BID.

## Determining the amount of the civil penalty notice

46. Where the Secretary of State is satisfied that a civil penalty should be issued, consideration will be given to the level of penalty that may be imposed.

47. The starting penalty for an initial failure to comply with a maintenance requirement will be £250.

## Evidence of mitigating circumstances

48. When determining the amount of the financial sanction the Secretary of State will consider whether the person has produced evidence of mitigating circumstances that would warrant a reduction in the amount of a civil penalty.

49. The Secretary of State may reduce the penalty by the amount stated in the Sanctions Table where there is satisfactory evidence that the penalty would cause undue financial hardship to a person in receipt of means tested benefits.

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50. Where a child under the age of 18 fails to comply with one of the maintenance requirements, the Secretary of State may consider issuing a civil penalty notice to the child's "designated adult"<sup>17</sup>, who will be liable for the civil penalty on the child's behalf. A designated adult who receives a penalty on behalf of a child will be able to object and appeal against that penalty.

51. Where the designated adult is also in receipt of a civil penalty in respect of their own non-compliance, the Secretary of State may reduce the penalty in respect of the child by the amount stated in the Sanctions Table by 50%.

52. Where a person provides evidence of more than one extenuating circumstance the Secretary of State will allow only a single discount of 50% of the amount stated in the Sanctions Table regardless of the number of mitigating circumstances.

### Further incidents of non-compliance

53. Where there are further incidents of non-compliance or continued failures in respect of the original requirement in a five-year period, the Secretary of State may increase the level of penalty by the amounts shown in the Sanctions Table. The total amount of the penalty on each occasion will be based on the number of times the person has failed to comply, or continued in their refusal to comply, and not the nature of the previous non-compliance.

#### Table of sanctions

Initial Penalty	Second penalty	Subsequent penalties
£250	£500	£1000

### Payment of penalties

54. Once the amount of the civil penalty has been fixed, the Secretary of State or the relevant court may allow the penalty to be paid in instalments. The Secretary of State or the court will decide the amounts and periods of payments.

### Issuing a civil penalty notice

55. If the Secretary of State receives a response within the warning period set out in the warning letter and is satisfied that the person is taking the necessary steps required to comply with the relevant requirement of the regulations, the Secretary of State will not impose a civil penalty.

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<sup>17</sup> Parent or carer



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56. If no response is received to the warning letter within the warning period set out in the warning letter the Secretary of State may decide to issue a civil penalty notice. The notice will specify the:

- amount of the penalty;
- date before which the penalty must be paid;
- methods of payment by which the civil penalty may be paid;
- grounds on which the Secretary of State considers the person to have failed to comply with a requirement of the regulations;
- ways to object to and appeal against a civil penalty; and
- ways in which the civil penalty may be enforced.

### Right of objection

57. If the Secretary of State has issued a civil penalty notice to a person they will have a right to object and/or appeal in writing on the grounds that:

- they have not failed to comply with a requirement of the regulations;
- it is unreasonable to require them to pay a penalty; or
- the amount of the penalty is excessive.

58. The person must submit a notice of objection using the specified form<sup>18</sup>, which must be completed in English, or it can be submitted in Welsh if the person ordinarily resides in Wales. The notice of objection must be received by the Secretary of State by post or by email<sup>19</sup> within the objection period.

59. The person must fully complete the form, and must include the full address of where they are residing and their signature. The form must clearly set out the grounds and reasons for objecting to the civil penalty notice.

60. The Secretary of State will consider a notice of objection and may:

- cancel the civil penalty notice;
- reduce the amount of the civil penalty by varying it;
- increase the amount of the penalty by issuing a new civil penalty notice; or
- confirm the amount of the civil penalty.

61. The Secretary of State will inform the person of the outcome of the objection in writing, and reply either by email or by post.

62. If, following an objection, a civil penalty notice is cancelled, or the amount of the civil penalty is reduced the Secretary of State will not usually pay any of the costs which the

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<sup>18</sup> <http://www.legislation.gov.uk/uksi/2008/2830/schedule/made>.

<sup>19</sup> ADC\_Enquiries@homeoffice.gov.uk.

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person incurred when objecting. The objection process does not attract a fee and is designed to avoid significant costs.

63. If the Secretary of State has not issued a response letter within 90 working days beginning with the date that the Secretary of State received the objection or the time set out in the warning letter, the civil penalty notice will be cancelled. However, it remains open to the Secretary of State to issue further penalty notices if the person persists in their failure to comply with the regulations.

64. If a person has objected to a civil penalty notice, but new evidence is submitted which shows the original amount was too low, the Secretary of State may decide to increase the amount of the civil penalty. This is in addition to the Secretary of State's powers to cancel, reduce or confirm the penalty notices issued.

### Right of appeal

65. There is no right of appeal to the Tribunal against a civil penalty. However, a person may appeal to the civil courts (the County Court in England, Wales and Northern Ireland and the Sheriff Court in Scotland) against a civil penalty imposed on them by the Secretary of State. An appeal may be brought for the same reasons as making an objection.

66. A person may appeal whether or not they have submitted a written objection to the Secretary of State.

67. Following an appeal, the Secretary of State will take account of any decision by the court to allow an appeal and will arrange for the person to comply with the requirement of the regulations where appropriate.

### The role of the court

68. The relevant civil courts (the County Court in England, Wales and Northern Ireland and the Sheriff Court in Scotland) are required to have regard to this Code of Practice when considering a person's appeal<sup>20</sup>. The court may review the Secretary of State's decision to impose a civil penalty, including any decision made after the Secretary of State's consideration of a written objection. The court may consider matters of which the Secretary of State was not aware when issuing a civil penalty notice<sup>21</sup>.

69. On consideration of an appeal the court may:

- cancel the civil penalty;
- reduce the amount of the civil penalty by varying the notice;

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<sup>20</sup> Section 13(3) of the UK Borders Act 2007.

<sup>21</sup> Section 13(3) of the UK Borders Act 2007.

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- increase the amount of the civil penalty by varying the penalty notice (whether because the court considers the original amount to have been insufficient or that the appeal should not have been brought); or
- confirm the civil penalty notice.

70. Where a court increases the penalty by varying the notice there may be a right of appeal to a higher court.

### **Costs<sup>22</sup>**

71. If it considers it appropriate the court may require the Secretary of State to pay the reasonable costs of a successful appellant.

72. The Secretary of State may apply to the court to recover the Secretary of State's reasonable costs from an unsuccessful appellant.

### **Enforcement of a civil penalty**

73. If a person has exhausted their rights of objection and appeal but has still failed to pay the civil penalty, the Secretary of State may enforce the civil penalty through the courts as a debt due or instruct the sheriff officers to take enforcement action.

74. The debt may be enforced by various means, including attachment of earnings orders (in England, Wales and Northern Ireland), or earnings arrestment or attachment in Scotland.

75. If the Secretary of State has issued a civil penalty notice against a designated adult the debt will be enforced against that adult, rather than against the child.

76. There is no power to imprison a person for failure to pay a civil penalty. However, the offence of contempt of court may be applicable.

### **Continued non-compliance with a requirement of the regulations**

77. If a person's failure to comply with a requirement is continuing 90 days after the issue of the civil penalty notice, the Secretary of State may issue a new civil penalty notice for that continuing failure (taking account of paragraphs 85 - 93 of this Code). A further civil penalty notice may only be issued after any objection and/or appeal against the original notice is withdrawn or determined, or the deadline for objecting and appealing has elapsed, and where the person continues their non-compliance<sup>23</sup>.

78. The Secretary of State may continue to issue civil penalties until the person has complied with the requirement. Any new notice issued will reflect the person's particular

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<sup>22</sup> In Scotland the normal rule is that expenses usually follow success in any litigation.

<sup>23</sup> Section 9(5) of the UK Borders Act 2007

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circumstances, which may include the person's continued non-compliance with the original requirement for which the penalty was first imposed and any other non-compliance with the requirements of the regulations.

79. The Secretary of State will not impose a civil penalty notice on a person who has already been subject to an immigration sanction if they continue to fail to comply with the requirement in respect of which the immigration sanction was imposed.

# Curtailment or variation of permission

## Consideration of curtailment or variation

80. In circumstances where the person has failed to comply with a requirement of the regulations and has been convicted of a criminal offence in relation to the use of their BID, the Secretary of State may consider curtailing or cancelling any existing limited permission to enter or remain in the UK

81. The Secretary of State will only consider cancelling permission in compelling circumstances, and if doing so would not contravene domestic law or the UK's international obligations.

82. A sanction to curtail permission will not be used where the person has existing indefinite leave to enter or remain in the UK, unless there are compelling reasons for cancelling this leave.

## Right of appeal

83. Under the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014 there will not be a statutory appeal against an immigration sanction. This is because there are only appeal rights against the refusal of protection or human rights claims and these are circumstances excluded from an immigration sanction (see above).

84. Transitional cases will exist which pre-date the Immigration Act 2014 being fully in force. If the Secretary of State decides to refuse an application for permission, or to curtail or cancel permission in a transitional case, the person may have a right of appeal to the First-tier Tribunal.

# Provisions for vulnerable people

## Vulnerable people

85. All foreign nationals who are subject to immigration control are required to comply with the regulations. This includes a person who may be vulnerable, such as a person;

- with a serious medical condition (see paragraph 87 for further guidance on this);
- who lacks capacity as defined under:
  - a. the Mental Capacity Act 2005 (for England and Wales);
  - b. the Adults with Incapacity (Scotland) Act 2000 (for Scotland); or
  - c. the Mental Capacity Act (Northern Ireland) 2016 (for Northern Ireland);
- who is a victim of trafficking, modern slavery or domestic violence.

86. In such cases, and where there is satisfactory evidence that a person has difficulty or has failed to comply with a requirement because of a vulnerability, the Secretary of State will consider alternative arrangements to enable the person to comply. Each case will be considered on its individual merits and handled with care and sensitivity.

## Serious medical conditions

87. Where the person's vulnerability is based upon a serious medical condition, for example, the person has substantial mobility difficulties or is infirm they or their carer or designated adult, must provide satisfactory medical evidence from the treating clinician. It includes people detained under mental health legislation. In the majority of cases, the Secretary of State will consider delaying the requirement for a short period to enable the person to either recover sufficiently to enable them to comply, or to make alternative arrangements to enable them to comply.

## Where a person lacks capacity to make a decision

88. Where there is satisfactory evidence that a person lacks the capacity to make decisions within the terms of the Mental Capacity Act 2005 (in England and Wales) or the Mental Capacity Act (Northern Ireland) 2016 (in Northern Ireland), the Secretary of State will allow the person to identify a person such as their carer, a close friend or family member to assist them to comply with the requirements of the regulations. Where the person concerned is unable to identify someone who is able to assist, efforts will be made to identify such a person. Where the person has appointed an attorney, under a lasting power of attorney (in England and Wales), or under an enduring power of attorney (in Northern Ireland), whilst they had capacity, or a deputy has been appointed by the Court of Protection, it is likely that individual will be the most suitable person to assist.

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89. Where there is satisfactory evidence that the person is an adult with incapacity within the terms of the Adults with Incapacity (Scotland) Act 2000, any guardian, continuing attorney, welfare attorney or manager of an establishment exercising functions under that Act or under a court order is likely to be the most suitable person to assist.

90. Where no suitable person can be identified, the Secretary of State will act in accordance with the principles of the relevant mental capacity law in supporting the person to comply with any of the regulations. In particular, the Secretary of State will ensure, as far as is possible, that the person is given:

- the opportunity to make decisions for themselves and the fullest possible input into any decisions made on their behalf; and
- help to express their wishes, ensuring that they are able to make those decisions for which they have capacity; and where decisions are made on their behalf, that they have their wishes taken into consideration (where possible).

91. The Secretary of State may decide, in some cases, to delay the application of the regulations, or make alternative arrangements, until the person is more capable of understanding what is required.

### **Victims of trafficking, modern slavery and domestic violence**

92. Where there is satisfactory evidence that the person is a victim of trafficking, modern slavery or domestic violence, the Secretary of State will ensure that the person is treated compassionately and appropriately.

### **Where a sanction will be imposed upon a vulnerable person**

93. The Secretary of State will only impose a sanction on a vulnerable person where there is satisfactory evidence that despite arrangements appropriate to their particular vulnerability having been available, they:

- intentionally failed to cooperate;
- understood what was required of them; and
- understood the consequences of not complying.

## Where a sanction will not be imposed

94. The Secretary of State will not impose a sanction on a person who is aged over 70 years who fails to update their facial image on their eVisa.

95. Where the Secretary of State has issued a warning letter advising a person that they are liable to be subject to an immigration sanction or a civil penalty notice, that letter will be withdrawn if the person responds providing:

- satisfactory evidence that they were unaware that they were required to comply with a requirement and have now made acceptable arrangements to comply;
- satisfactory evidence that they have complied with the requirement;
- a credible explanation that they did not receive notice of the requirement;
- satisfactory evidence that they did not understand the requirement due to language difficulties or illiteracy;
- satisfactory evidence of other circumstances outside their control where it would be unreasonable to impose the sanction.

96. The Secretary of State will not impose a sanction where the person has an appeal against a previous civil penalty outstanding which has not been considered by the court.

97. In such cases, the Secretary of State will make arrangements so that the person is able to comply with the requirements as far as is possible.



