



Home Office

## **UK Borders Act 2007:**

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

March 2025



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Presented to Parliament pursuant to section 13(5)(c) of the UK Borders Act 2007

March 2025



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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 to make it easier for foreign nationals, who have permission to live in the UK, to prove their status and identity so they can 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 (BIDs)<sup>1</sup>. In 2008, we started to replace less secure evidence of permission, such as immigration status letters, ink stamps, and stickers or vignettes in travel documents with a physical BID, in the form of the biometric residence permit (BRP). 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 biometric residence permit 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. This was in preparation for 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 or holders of legacy immigration documents, such a vignette (passport sticker) and passport ink-stamp endorsements who have not applied for a BID.
5. If a person deliberately fails to comply with a requirement of the 2008 Regulations, the Secretary of State<sup>7</sup> may issue a sanction<sup>8</sup>. This forms part of the overall strategy of

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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.

ensuring foreign nationals living in the United Kingdom have secure, reliable evidence of their immigration status and adhere to our immigration rules and laws. The Secretary of State will not issue a sanction where there is evidence that a person is unable to comply with a requirement of the 2008 Regulations, unless they also fail to cooperate with efforts to help them.

6. There is support for people already in the UK who are unable to use digital services either because they lack access to suitable technology or have limited digital skills via the Assisted Digital service. Details on how to access this service are available on GOV.UK here: <https://www.gov.uk/assisted-digital-help-online-applications>. We are developing our digital products and services for use by all, including vulnerable users. Extensive support is currently available through the 'Transition to eVisa' fund. This grant funded network of voluntary and community sector organisations is free support available to vulnerable people who need help accessing their eVisa. A full list of organisations is available on GOV.UK at: <https://www.gov.uk/government/publications/evisa-community-support-for-vulnerable-people>.

7. People can nominate a 'helper' and give them limited access to their account. The 'helper' can assist with creating a UKVI account, completing details to access an eVisa, and with any immigration application. Where a person is unable to manage their own affairs due to, for example, age or disability, a 'proxy', who is authorised, can create and manage the account on behalf of the person.

### Legal requirements

8. 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.

9. 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.

10. 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 who may advise the person about how the Code may apply to them. It will also be used by decision making staff in the Home Office, and by the civil courts.

11. This Code updates the one issued in 2015<sup>10</sup> and reflects the transition from physical to digital documents in the form of an eVisa. BIDs will be issued digitally. They

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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/publications/non-compliance-with-the-biometric-registration-regulations).

can be accessed by the person holding the immigration status on 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**

12. All foreign nationals who are subject to immigration control and required to apply for a BID must comply with the relevant requirements of the Immigration (Biometric Registration) Regulations 2008 (the 2008 Regulations).

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

14. Application requirements are those which form an essential part of the application process for a BID, when made alongside an application for entry clearance, permission to enter, permission to stay or settlement. 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 entry clearance, new permission to enter or stay in the UK, or settlement;
- 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. This includes providing, by a specified date, a record of their fingerprints and photograph of their face.

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

- 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, unless they are aged over 70 years of age;
- 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 is being used by a person who has not been authorised by them or the Secretary of State;
- 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 2008 Regulations;

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

- surrender to the Secretary of State, when required to do so, any physical BID in the person's possession; or
- comply with other requirements specified in the 2008 Regulations.

## **Applying sanctions in relation to Children's eVisas**

16. The Secretary of State must consider the best interests of the child under Section 55 of the Borders, Citizenship and Immigration Act 2009 (section 55) when considering whether to impose a sanction in relation to a child's eVisa, where there has been non-compliance with a requirement of the 2008 Regulations.

17. Where there has been non-compliance on a child's eVisa in relation to one or more requirements of the 2008 Regulations, the Secretary of State may consider imposing a civil penalty on the adult who has responsibility for the child.

18. While section 55 does not extend to children outside of the UK, you must take account of the fact that the person is a child where there appears to have been a failure to comply with one or more of requirements of the 2008 Regulations.

## **Summary of the types of sanctions**

19. If a person does not comply with a requirement of the 2008 Regulations, the Secretary of State may consider whether the person has failed to comply with either an application or a maintenance requirement. This will inform whether the Secretary of State decides to issue a sanction, and the types of sanction(s) to apply, if any.

### **Application sanctions**

20. Where the Secretary of State considers a person has failed to comply with one or more of the application requirements at the application for permission stage, 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;
- issuing a civil penalty notice when an immigration sanction should not be imposed;
- a refusal to issue the person with a BID.<sup>12</sup>

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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.



## Maintenance sanctions

21. 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>:

- preventing a “share code”<sup>14</sup> from being created;
- refusing to issue a replacement BID;
- a financial sanction in the form of a civil penalty notice;
- the cancellation or variation by curtailment of a person’s existing leave to enter or remain in the UK.

## Create a share code

Where the person has not updated their facial image when required, the Secretary of State may prevent the person from being able to create a share code to pass to third-party checkers until they have complied with the requirement.

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

<sup>14</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.

# Application Requirements

## Process before issuing an application sanction

22. The person will be told how and by when they must complete the application requirements, which will vary depending on the type of application being made. The applicant is expected to adhere to any of the application requirements within this period or may have their application disregarded<sup>15</sup>.

23. The Secretary of State will send a written notification<sup>16</sup> 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. This must not be less than 14 calendar days from the date the notification was issued.

## Content of application notification

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

25. Where a person making an application for entry clearance from outside the UK considers they are unable to comply with the application requirements, they must contact the Home Office at the time they submit their application.

26. Where a person is making an application from within the UK for permission to enter, remain or for settlement and considers they cannot comply with an application requirement, they must contact the Home Office before the time they are required to complete the application about their circumstances. Unless the person can evidence their circumstances are preventing them from complying with the requirements, such as they need to stay in hospital for an 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

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

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<sup>15</sup> This means the same as treated invalid under the Immigration Rules.

<sup>16</sup> For people who are applying from overseas this will only be available in a digital format. Non-digital notifications will only be issued to a UK postal address.

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28. No other type of sanction will be imposed on the person for failing to comply with an application requirement where the Secretary of State has applied an immigration sanction against them. The applicant will be free to make further applications for permission.

# Maintenance requirements

## Process before issuing a maintenance sanction

29. Where the 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 a facial image

30. 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” necessary to enable them to share their status with a third-party checker. This will apply to the eVisas of children who are 10-years or older and adults who are under the age of 70 who fail to update their facial images in line with the 5-year and 10-year rules.

31. 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, including what support is available if they are unable to do so themselves.

32. 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 or immigration abuse, the Secretary of State may also consider imposing additional or other sanctions, in addition to preventing the person from creating a “share code”.

## Following the issue of a facial image warning notification

33. Where a person fails to update their facial image, the Secretary of State will need to be satisfied the person had a reasonable opportunity to comply with this requirement of the 2008 Regulations before preventing them from being able to create a share code.

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

## Other details about the person

35. Where the Secretary of State becomes aware from other sources that biographical information about the person has changed, they may prevent the person from creating a share code until the person notifies the Secretary of State about any changes to their

personal details. The Secretary of State must issue the person with a warning letter giving them at least 14 days to update the information on their eVisa using their account.

36. The Secretary of State must issue a written notice when they have imposed a sanction that explains the reason for the imposition of the sanction. The notice must also include advice on the steps the person needs to take to update their personal details. It should also include information about where the person can access support.

## **Replacing expired or cancelled biometric immigration documents**

37. A person, aged under 70, whose BID was cancelled or has expired must apply for a replacement within 18-months from the date of the cancellation or expiration of their BID, where they still have permission to stay in the UK. The Secretary of State must not impose any sanction on a person who fails to create an account to access their eVisa, unless they are satisfied that the person has an outstanding immigration permission, was aware that their BID was cancelled or had expired, and were either given reasonable notification about the requirement to create a UKVI account to access their eVisa or had reasonable opportunity to be aware of the requirement.

38. Where a person claims they were unaware they needed to create a UKVI account to access their eVisa, no sanction may be imposed on them unless the Secretary of State has set out to them, in writing, the steps they need to follow to create their UKVI account to access their eVisa, and where they can find support if they claim they are unable to do so. Where a person who has been notified in writing about creating their UKVI account fails to do so within the period specified in the written notification, the Secretary of State must issue them with a warning letter giving them at least 14 days to create an account.

39. Where the Secretary of State decides to issue a sanction, they must issue a written notice that explains the reason for the imposition of the sanction. The notice must also include advice on the steps the person needs to undertake to create their UKVI account and access their eVisa.

## **Replacing legacy immigration document**

40. The Secretary of State can only refuse to issue a BID to someone with extant immigration permission who applies to replace a legacy immigration document if they fail to complete the application process, such as not booking an appointment or not providing biometric information when required. Although the Secretary of State strongly encourages people who hold legacy immigration documents to replace their document with a BID, by making a no time limit (NTL) application, they are not required to do so.

## Other maintenance requirements sanctions

41. The Secretary of State will only consider imposing a maintenance sanction if they are satisfied that a person has failed, without a reasonable excuse, to comply with one or more of the maintenance requirements of the 2008 Regulations. Where the non-compliance with the requirement to update a facial image is linked to other non-compliance, abuse of our immigration system or criminality, the Secretary of State may impose additional or other sanctions.

### Process before issuing other maintenance sanctions

42. 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 are vulnerable, have permission to enter or stay in the UK, or settlement.

43. 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 varying or cancelling the person's permission to enter or stay, or settle in the UK in the most serious instances of non-compliance with the maintenance requirements.

44. 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 the person has created their UKVI account using accurate information.

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

46. When preventing the person from either creating a share code or refusing to issue them with a BID is not appropriate, or where these measures fail to ensure compliance, the Secretary of State may consider imposing a civil penalty or varying or cancelling the person's permission to enter or stay in the UK or to settle. These penalties will only be considered where the individual's failure to comply with a requirement of the 2008 Regulations is significant and may be linked to criminality or abuse of the immigration system.

47. 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 or to settle, they must issue the person with a warning letter at least 14-days before implementing any sanction.

### Content of maintenance requirement warning letter

48. The warning letter will set out the reasons why the Secretary of State considers the person has not complied with the requirements of the 2008 Regulations and what

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action may be taken. It will outline how the person may avoid a sanction being imposed such as by:

- responding 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
- providing 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
- allowing the Secretary of State to put into place special arrangements to enable the person to comply; or
- providing satisfactory evidence which explains why they are unable to comply.

49. 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

50. The Secretary of State **will not** impose a sanction until the warning period stated in the letter has ended or, as soon as an officer acting on behalf of the Secretary of State is satisfied that the person does not intend to comply with an oral notice.

51. 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

52. Where 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.

53. The Secretary of State may consider imposing a financial sanction in the form of a civil penalty notice on a person, who is aged over 18, where they have failed to comply with a requirement without a reasonable excuse, where the person is:

- a parent or carer of a child where they have failed to comply with one or more requirements of the regulations, and they have responsibility for the child’s eVisa;
- aged under 70 and 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;
- someone who has failed to notify the Secretary of State that an unauthorised person has obtained their BID or gained control of their eVisa;
- someone other than the person who holds the immigration status and who is not authorised to possess the holder’s BID, and has obtained it without the holder’s and Secretary of State’s authority and has failed to return it to either the holder or the Secretary of State;
- the status holder and the Secretary of State has decided not to impose an immigration sanction on them for failing to comply with a requirement of the 2008 Regulations;
- the status holder who has failed to provide accurate information when creating their UKVI account to enable the Secretary of State to issue them with a BID.

## Determining the amount of the civil penalty notice

54. 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. The level of penalty issued for each penalty cannot exceed £1000. However, subsequent penalty notices of up to £1000 may be issued where the non-compliance continues.

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



## Evidence of mitigating circumstances

56. 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.

57. For people in receipt of means tested benefits, the Secretary of State may reduce the penalty by 50% of the amount stated in the Sanctions Table where there is satisfactory evidence that the penalty would cause undue financial hardship.

## Designated adults and children

58. A designated adult is a person aged over 18 who takes responsibility for a child aged under 18's compliance with one or more of the requirements of the 2008 Regulations.

59. Where there has been non-compliance on a child's eVisa in relation to one or more of the maintenance requirements of the 2008 Regulations, 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.

60. 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 50% of the amount stated in the Sanctions Table.

## Multiple extenuating circumstances

61. 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

62. 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.

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<sup>17</sup> Parent or carer

## Table of sanctions

| Initial Penalty          | Second penalty | Subsequent penalties |
|--------------------------|----------------|----------------------|
| £250                     | £500           | £1000 (Maximum)      |
| <b>With 50% discount</b> |                |                      |
| £125                     | £250           | £500                 |

### Payment of penalties

63. 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

64. 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 2008 Regulations, the Secretary of State will not impose a civil penalty.

65. 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 2008 Regulations;
- ways to object to and appeal against a civil penalty;
- ways in which the civil penalty may be enforced;
- support that is available to enable the person to comply with the requirements of the 2008 Regulations; and
- ways the penalty may be cancelled.

### Right of objection

66. 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 2008 Regulations;
- it is unreasonable to require them to pay a penalty; or
- the amount of the penalty is excessive.

67. 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.

68. The person must fully complete the form and 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.

69. 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.

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

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

72. If the Secretary of State has not issued a response to the objection within 90 working days beginning with the date that the Secretary of State received the objection, the civil penalty notice will be treated as 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 2008 Regulations.

73. 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.

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

<sup>19</sup> [ADC\\_Enquiries@homeoffice.gov.uk](mailto:ADC_Enquiries@homeoffice.gov.uk).

## Right of appeal

74. 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.

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

76. 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 2008 Regulations where appropriate.

## The role of the court

77. 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>.

78. On consideration of an appeal, the court may:

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

79. 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>

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

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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.

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

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

## **Recovery of a civil penalty**

82. 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 action to collect the penalty.

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

84. 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.

85. 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 2008 Regulations**

86. 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 94 - 110 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>.

87. 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 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 2008 Regulations.

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

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

# Curtailment or variation of permission

## Consideration of curtailment or variation

89. In circumstances where the person has failed to comply with a requirement of the 2008 Regulations, the Secretary of State will only consider curtailing or varying any existing limited permission to enter or remain in the UK where there has been significant non-compliance with the 2008 Regulations, such as where the person:

- is suspected to be involved in the commission of a criminal offence in relation to the use of their BID; or
- was granted entry clearance and was exceptionally allowed to travel to the UK before they enrolled their biometrics, and they have subsequently failed to do so following their arrival in the UK.

This will only be considered where curtailing or varying the person's permission would not contravene domestic law or the UK's international obligations.

90. Ordinarily, a sanction to curtail or vary permission will not be used where the person has existing indefinite permission to enter or remain in the UK, unless there has been significant non-compliance with the 2008 Regulations to justify curtailing or varying this leave.

91. Any decision to curtail or vary permission under Regulation 23 of the 2008 Regulations, must be approved by a Home Office minister.

## Right of appeal

92. Under the Nationality, Immigration and Asylum Act 2002, as amended by the Immigration Act 2014, there will not be a statutory right of 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).

93. 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

94. All foreign nationals who are subject to immigration control are required to comply with the 2008 Regulations. This includes a person who may be vulnerable, such as a person who;

- has a serious medical condition (see paragraph 96 for further guidance on this);
- 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);
- is a victim of trafficking, modern slavery or domestic violence;
- is a child or young person;
- has limited digital skills or access to digital technology; or
- is vulnerable for other reasons that makes it more difficult for them to comply with the 2008 Regulations than other people.

95. 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 assist the person to comply. Each person's case will be considered on its individual merits and in light of the specific circumstances. The Secretary of State is committed to handling each person's case with care and sensitivity.

## Serious medical conditions

96. Where the person's vulnerability is based upon a serious medical condition, for example where 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. This includes people who are currently being held in involuntary care ("sectioned") under mental health legislation. The Secretary of State will consider delaying compliance with the requirement for a reasonable period to enable the person to either recover sufficiently to allow them to comply, or to make alternative arrangements to assist them to comply.

## Where a person lacks capacity to make a decision

97. 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

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member to assist them to comply with the requirements of the 2008 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.

98. 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.

99. 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 2008 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).

100. The Secretary of State may decide to delay the application of the 2008 Regulations, or make alternative arrangements, until the person is more capable of understanding what is required.

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

101. 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.

102. The Secretary of State must ensure the person is supported so they are able to comply with a requirement of the 2008 Regulations.

### Children and young persons

103. Where the designated adult for a child who is in the UK has not complied with a requirement of 2008 Regulations, the Secretary of State must take steps to encourage the designated adult with responsibility for the child's eVisa to comply with a requirement of the regulations, before considering issuing a sanction.

104. Where a young person who is in the UK has recently become an adult, they will be entitled to manage their own UKVI account and access their eVisa. Where there is a requirement to update their personal information, including their facial image, the Secretary of State must ensure they are aware of the requirement to update their details



and, where necessary, offer support to enable them to comply with the requirements of the 2008 Regulations.

### **Limited digital skills or access to technology**

105. Where a person who is located in the UK claims they cannot comply with a requirement of the 2008 Regulations because they are either unable to use or access a digital device, the Secretary of State must assess the person's circumstances before imposing or continuing a sanction.

106. The Secretary of State must consider what steps the person has taken to enable them to create and/or access their UKVI account. Where a person claims to have limited digital skills, the Secretary of State must provide the person with information to help them access support, including access to Assisted Digital or the Resolution Centre.

107. Only where the Secretary of State is satisfied that the person is aware of the steps they can undertake to create or access their UKVI account, and is capable of following those steps, but has deliberately chosen not to take any reasonable steps to create or access their UKVI account, the Secretary of State may continue to impose a sanction on the person.

### **Other vulnerable people**

108. The Secretary of State must have regard to people who are in the UK and have circumstances that would make it more difficult for them to comply with the 2008 Regulations.

109. The Secretary of State may only issue a sanction where they are satisfied the person has access to suitable support but has chosen not to use it.

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

110. 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 comply with the 2008 Regulations;
- understood what was required of them; and
- understood the consequences of not complying.

## Where a sanction will not be imposed

111. 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.

112. The Secretary of State will not impose a sanction on the designated adult in relation to a child's eVisa where it would not be in the interests of the child to do so.

113. 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 they could not create or access their UKVI account and had taken reasonable steps to do so;
- satisfactory evidence of other circumstances outside their control where it would be unreasonable to impose the sanction.

114. 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.

115. 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.

