

EXPLANATORY MEMORANDUM TO THE
IMMIGRATION (LEAVE TO REMAIN) (PRESCRIBED FORMS AND
PROCEDURES) (No.2) REGULATIONS 2005

2005 No. 2358

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. **Description**

- 2.1 These Regulations revoke and replace the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2005 (“the 2005 Regulations”). The 2005 Regulations prescribe application forms to be used in connection with applications for limited or indefinite leave to remain in the United Kingdom, and set out the correct procedures to be followed when making those applications.

- 2.2 It has come to light that one of the application forms contained in the 2005 Regulations omitted an important question about the applicant’s criminal convictions. It is therefore necessary to correct this defect. These Regulations replace the application forms in the 2005 Regulations with revised application forms, and make a couple of changes to the prescribed procedures.

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

- 3.1 The principal reason for making these Regulations is to correct a defective Statutory Instrument.

4. **Legislative Background**

- 4.1 Section 31A of the Immigration Act 1971 enables the Secretary of State by Regulations to prescribe forms and procedures for applications for leave to enter or remain in the United Kingdom.
- 4.2 Forms and procedures were first prescribed in the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2003 (S.I. 2003/ No. 1712). Additional application forms and amendments to the procedure were prescribed by later sets of Regulations.
- 4.3 All of the existing application forms were replaced by the 2005 Regulations, which introduced revised and re-formatted application forms.

5. Extent

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

6. European Convention on Human Rights

Not applicable

7. Policy background

- 7.1 The 2005 Regulations came into force on 1st April 2005. In using the application forms that were introduced by the 2005 Regulations we identified that one of the prescribed forms omitted questions about the applicant's criminal convictions. A correction to amend the defective 2005 Regulations is therefore required.
- 7.2 Having identified this omission, it was decided to overhaul the section on criminal convictions altogether, and to make this change on all the application forms. A new application form has also been prescribed for the Fresh Talent: Working in Scotland Scheme, a new category recently introduced by the Immigration Rules.
- 7.3 These Regulations also contain changes in the procedure for submitting application forms. The regulations on prescribed forms and procedures have always provided for an invalidation process. This means that, where an applicant applies on the correct form, but does not sign or date his application,

or fails to provide the necessary documents, his application can be invalidated. This can only happen if the Immigration and Nationality Directorate (IND) informs the applicant of the deficiency promptly and the applicant then fails to remedy the deficiency promptly thereafter. The result of an application being invalid is that it will be returned and the fee paid will be refunded.

- 7.4 These Regulations make two changes to the invalidation procedure. An additional trigger has been included for the invalidation procedure. Now, where the applicant fails to complete the application form as directed (e.g. by leaving questions unanswered), IND can invoke the invalidation procedure. This is required to ensure that the IND continues to perform effectively and meet its business standards.
- 7.5 Secondly, the notifying period IND has to write to the applicant has been extended from 21 to 28 days. The previous Regulations reflected our 3 week initial consideration target which was set in 2003. We now have a 4 week initial consideration target and this should be reflected in the current Regulations.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is expected to be none.

9. Contact

Cheryl Pellew at the Immigration and Nationality Directorate of the Home Office Home Office (Tel: 020 8760 4073 or e-mail:Cheryl.Pellew@ind.homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.