

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (REGISTRATION CARD) ORDER 2008

2008 No.

1. 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 This order amends the definition of registration card in section 26A of the Immigration Act 1971 by extending it to cover documents carrying information about a person issued to persons claiming support under section 4 of the Immigration and Asylum Act 1999. As a result, the criminal offences relating to registration cards will apply to any cards issued in connection with section 4 support claims. Section 4 enables the Secretary of State to provide facilities for accommodation to, among others, persons applying for immigration bail and those who have been unsuccessful in their asylum claim and who meet the eligibility criteria.

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

3.1 The Order amends primary legislation via secondary legislation and is the first time that the power in section 26A(7) of the Immigration Act 1971 has been used to amend the definition of a registration card set out in primary legislation via an order.

4. Legislative Background

4.1 Section 26A (3) of the Immigration Act 1971 introduced a number of criminal offences relating to the falsifying or altering of registration cards as a fraud prevention measure. Section 26A(1) defines a registration card as a document which carries information about a person which has been issued by the Secretary of State to a person wholly or partly in connection with a claim for asylum. Section 26A(7) creates a power to amend the definition of “registration card” by order.

4.2 This statutory instrument is the first time that the definition has been amended and will extend the definition of registration card to include documents issued by the Secretary of State to a person wholly or partly in connection with a claim for support under section 4 of the Immigration and Asylum Act 1999 (whether or not made by that person.). Support under section 4(1) is available to a number of classes of people subject to immigration control, including those with temporary admission, those released

from detention and persons on bail under immigration provisions. The majority of people supported are destitute former asylum seekers whose claim for asylum was rejected and who are temporarily unable to leave the United Kingdom for reasons beyond their control. Destitute failed asylum seekers and their dependants are supported under section 4(2) and 4(3) respectively.

4.3 By extending the definition of registration card to documents issued wholly or partly in connection with a claim for support under section 4, the order will ensure that criminal offences relating to fraudulent production or use of such documents will apply to registration cards issued to those accommodated under section 4.

4.4 The order relates to the forthcoming Immigration and Asylum (Provision of Accommodation) Regulations which outline the test for eligibility for section 4 accommodation and the conditions for its continued provision. It is intended to introduce a condition for the continued provision of accommodation that those accommodated should produce a registration card when required. This will be an important tool to enhance contact management and counter the possibility of fraudulent support claims.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 Liam Byrne, Minister of State has made the following statement regarding Human Rights:

In my view the provisions of The Immigration (Registration Card) Order 2008 are compatible with the Convention rights

7. Policy background

7.1 The Border and Immigration Agency currently provides asylum applicants and their dependants with an Application Registration Card (ARC) which is issued in connection with their asylum claim. It contains personal details including the name they have given to the Agency and a photograph. This card serves a number of purposes and in particular it is produced on reporting and when collecting asylum support at a post office. It is a valuable weapon against the fraudulent collection of support, assists with contact management and enables more efficient reporting procedures.

7.2 Destitute asylum seekers and their dependants, and the majority of unsuccessful asylum seekers with dependent children under age 18 in their households are eligible for support under section 95, Immigration and Asylum Act 1999. Support includes cash collected weekly from a Post Office. Other unsuccessful asylum seekers, and their dependants, who meet the eligibility criteria may be entitled to support under section 4 of that Act. Support under

section 4 is a non-cash regime and those in self catered accommodation are provided with vouchers to enable the purchase of food and essential toiletries.

7.3 Those supported under section 95 are all issued with an ARC which they use to access their support. Those applying under section 4 may not have an ARC, either because they no longer have the one issued to them or because the original asylum claim pre-dated the issue of ARCs. It is not Border and Immigration Agency's policy to withdraw an ARC until an individual leaves the United Kingdom, but the card may have been withdrawn in some cases where the individual no longer required the card for support if there was a potential for misuse, or the individual may have lost the card. At the end of September 2007, 9,500 applicants (excluding dependants) were in receipt of support under section 4. Of these, we estimate 5% no longer have an ARC. Without an ARC, it is difficult to confirm the identity of those applying for section 4 support and of those occupying section 4 accommodation, thus increasing the potential for fraud.

7.4 The Border and Immigration Agency can use its administrative powers to issue ARCs to all those applying for support, or currently receiving support under section 4 who do not already have one. However, without the Order, the criminal offences relating to the fraudulent production and use of registration cards would not apply to those issued in connection with a claim for section 4 support.

7.5 There are offences in section 26A(3) of the Immigration Act 1971 which relate to falsifying or amending registration cards issued in connection with asylum claims. Currently these offences apply to persons claiming asylum who are issued ARCs. . The offences cover making a false registration card, altering a registration card with intent to deceive, possessing a false or altered registration card, using or attempting to use an altered registration card with intent to deceive, making an article designed to be used to make a false registration card or alter a registration card, or possessing such an article. All of the offences are triable in the Magistrates Court and in the Crown Court. The offences of possession of a false/altered registration card, or possession of an article designed to be used in making a false registration card or altering a registration card have a maximum penalty of 2 years imprisonment on indictment or an unlimited fine or 6 months imprisonment when tried summarily or a £5,000 fine. The remaining offences have a maximum penalty of 10 years imprisonment or an unlimited fine on indictment or 6 months imprisonment or a £5,000 fine when tried summarily.

7.6 Without amendment, the offences would not apply to ARCs issued in connection with section 4. This instrument will therefore extend the definition of registration card for the purposes of section 26A(1) to include documents issued by the Secretary of State to a person in connection with a claim for support under section 4 (whether or not made by that person). The definition covers cards issued both to the main applicant for support and to his or her dependants. It will therefore be a criminal offence to forge or amend an ARC issued in connection with section 4 or use such a card. The change brought about by the order is legally rather than politically important, in that the

primary aim is to extend the application of these offences to those supported under section 4.

7.7 We have not consulted on the Order as there is no statutory obligation to do so. Its aim is limited to ensuring that the consequences of falsifying or altering ARCs issued in connection with section 4 accommodation are the same as for ARCs issued to asylum seekers, who receive support under Part VI Immigration and Asylum Act 1999. We are intending to seek views from the voluntary sector and other interested parties on the proposed new Immigration and Asylum (Provision of Accommodation) Regulations (2008).

7.8 We consider the Order will be of low public interest as it introduces a technical change to bring into line offences which may be applied for misuse of the ARC for those supported under section 95 and 98 of the Immigration and Asylum Act 1999 with those supported under section 4.

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 that arrangements for the issue of the cards will be required. The security of the support system will be enhanced.

9. Contact

Ann Robertson at the Border and Immigration Agency [Tel: 020 8760 8612] or e-mail: Ann.Robertson@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.