

IMMIGRATION DIRECTORATES' INSTRUCTIONS

CHAPTER 1A

SECTION 1

SPECIFIED APPLICATION FORMS AND PROCEDURES

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CHAPTER 1A**SECTION 1****SPECIFIED APPLICATION FORMS AND PROCEDURES****1. INTRODUCTION**

1.1 On 29 February 2008, immigration rules come into force specifying application forms and procedures for applications or claims in connection with immigration and the consequences of not complying with the specified requirements. The rules, made under section 50(1) of the Immigration, Asylum and Nationality Act 2006, are in paragraphs 34A-34J of the immigration rules. The Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007, which previously specified application forms and related procedures for applications for leave to remain in the United Kingdom, will cease to have effect on 29 February 2008. However, applications made before that date will continue to be subject to these regulations (or the equivalent regulations in force on the date of application).

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

1.2 This instruction provides guidance on the new rules and related issues.

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2. SPECIFIED APPLICATION FORMS

2.1 Under these rules, an application form may be specified for any application or claim in connection with immigration, whether it be an application for limited or indefinite leave to remain under or outside the rules, an application for entry clearance, or an application under legislation other than the immigration rules. An application form is specified when, in the words of paragraph 34:

- it is posted on the website of the UK Border Agency
- it is marked on the form that it is a specified form for the purpose of the Immigration Rules, and
- it comes into force on the date specified on the form and/or in any accompanying announcement.

2.2 A specified application form remains in force until a revised form is re-specified or the form is removed from the website of the UK Border Agency.

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3. SPECIFIED REQUIREMENTS

3.1 An application on a specified application form must comply with any relevant requirements specified in the immigration rules in order to be valid. Such requirements are specified in paragraph 34A. They are set out below in the order in which they appear in the rules.

3.2 Use of the specified form

With the exception of any transitional arrangements ([see section 7](#)), if an application form is specified for a particular purpose, the application must be made on the currently specified form. An application for that purpose made on any other form or in any other way (by letter, for example) is invalid.

3.3 Payment of any specified fee in accordance with the specified method

Any specified fee must be paid by one or other of the methods specified in the form and/or guidance notes. If it is paid by any other method, the application is invalid. For example, cash is not acceptable for postal applications. This is made clear in the payment guidance.

Anyone sending cash by post should have his or her application rejected even if the cash is for the full amount. An application will also be invalid if any specified fee is not paid in full (although the rejection will fall under the relevant Fees Regulations, rather than under the immigration rules).

3.4 **Completion of any section designated as mandatory**

Any section of the form designated as mandatory must be completed in full as required. For these sections, (for example, the Personal History section) every question must be answered and all the information specified in the section must be provided. The fact that a section is mandatory will be clearly stated at the beginning of that section on the specified form. The application will be invalid if such a section is not completed as required. If sections of the forms which are not designated as mandatory are not completed as required, caseworkers may attempt to obtain the missing information from the applicant, or consider the application on the basis of the information provided, but the application will be valid.

3.5 **Biographical or biometric information**

Requirements relating to biometrics will only be introduced when the biometrics regulations come into force later in 2008, before which time this instruction will be updated to cover this in more detail.

3.6 **Specified photographs and documents**

Any photographs or documents specified as mandatory must be provided. Photographs are mandatory in all specified forms. Passports or travel documents may be mandatory in some specified forms. Where they are clearly marked as mandatory in the form and/or guidance notes, the application is invalid if they are not provided with the application form. The process will be different as and when online applications begin, as there will be a time lag between the receipt of the online form and the receipt of any specified photographs or documents. Updated guidance will be issued then.

3.7 **Signing the form or completing the confirmation box**

In applications made by post, or submitted in person or by courier, the form must be signed by the applicant and, where applicable, the applicant's partner. The requirement is specified in the section containing the declaration(s). If the main applicant is under 18, the form may (not must) be signed by a parent or legal guardian instead of by the applicant. The application is invalid if the form is not signed as required. Although the applicant is also asked to complete the date when signing the form, the application will not be invalid if

the form is signed as required but not dated. In such cases, it is not necessary for the form to be returned to the applicant in order for it to be dated.

When forms are specified for online applications, instead of the form having to be signed, the confirmation box will have to be completed by the applicant or by an immigration adviser authorised to do so by the applicant.

3.8 **Methods of delivery**

Paragraph 34B specifies the methods by which an application on a specified form may be delivered to the UK Border Agency. In most cases, applications may be sent by prepaid post or made in person to a public enquiry office. The exceptions are listed in paragraphs 34B(i) and (ii). Each specified application form and its associated guidance notes will state, in accordance with the provisions of these rules, the manner in which an application on that form may be made. If it is made in any other way (sent by fax, for example), it will be invalid.

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4. **DEPENDANTS OF THE MAIN APPLICANT**

4.1 Paragraph 34D permits the inclusion of applications by dependants on a specified application form if they are the spouse, civil partner, unmarried or same-sex partner and/or children under the age of 18 of the main applicant, and provided that the form permits the inclusion of such applications. If dependants other than those specified in paragraph 34D are included (for example, a child who is 18 or over), the application(s) of such dependants will be invalid. This will not invalidate the application of the main applicant (and the applications of any permitted dependants) if the application meets all other requirements of these rules.

4.2 If a dependant as specified in paragraph 34D is included in an application, even though there is no provision for dependants in the rules under which the application is being made (for example, under the long residence rules), the application in respect of that dependant will be valid (assuming all other requirements of paragraph 34A of the rules are met). The normal course in such a case will be to refuse the dependant's application on the basis that it is for a purpose not covered by the immigration rules. This will not affect the consideration of the main applicant's application in line with the immigration rules under

which they have applied.

- 4.3 The PBS (Dependant) form is the correct specified form for use by children over the age of 18 who wish to apply as dependants of Migrants under the Points Based System. However, such an application will not be valid unless it is accompanied by the full specified fee. Although such dependants may be permitted under the immigration rules, they do not fall within the definition of dependant for the purposes of these rules or the relevant Fees Regulations.

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5. VARYING AN APPLICATION FOR LEAVE TO REMAIN

- 5.1 An applicant may vary an application at any time before it is decided. If it is varied to a purpose for which a different application form is specified, that form must be completed and all other relevant requirements of paragraph 34A must be complied with in order for the variation to be valid. In effect a valid variation will look like a fresh application; caseworkers should check CID to see whether an earlier application exists, in order to establish whether the specified form submitted is a variation of an existing application.
- 5.2 Where a variation complies with all the requirements of paragraph 34A except the submission of photographs, and the applicant (and dependants if appropriate) has already submitted photographs with their initial application, discretion outside the rules may be exercised to accept the variation as valid.
- 5.3 A dependant may not validly be included in a variation of an application unless they were included in the original application. The dependant will need to be advised to make a separate valid application, and to pay the relevant fee for that application.
- 5.4 Further guidance regarding the variation of applications will be issued shortly.

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6. THE DATE OF APPLICATION

- 6.1 For the purposes of these rules, the date on which an application (or a variation) is made is the date of posting for postal applications, the date of acceptance by a public enquiry office

for applications submitted in person, the date of delivery to the UK Border Agency if sent by courier, or the date of submission online.

- 6.2 The postmark is the critical evidence of the date of posting. If the envelope in which the application was posted is missing, or if the postmark is illegible, the date of posting must be assumed to be at least one day before its receipt in the UK Border Agency. The best indicator of the date of receipt will normally be the date of processing on the payment contractor's stream sheet. Where there is accompanying correspondence which matches the likely date of posting, this date should be regarded as the application date. Where there is any uncertainty, the applicant should be given the benefit of the doubt.
- 6.3 Where an application (or variation) has previously been rejected as invalid under the immigration rules, and is then resubmitted, fully complying with the requirements of paragraph 34A, the date of application (or variation) will be the date that the application form is resubmitted, that is the date it is posted, delivered by courier or accepted at a public enquiry office. Caseworkers should ensure that the fee has been retained before confirming validity. A valid application (or variation) only exists once all the requirements of paragraph 34A of the rules have been complied with.

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7. TRANSITIONAL ARRANGEMENTS

- 7.1 Paragraphs 34H and 34I include transitional arrangements for the situations set out below.
- 7.2 **Applications made before 29 February 2008**
Applications made before 29 February 2008 ([see paragraph 6.1 above](#)) for which a form is prescribed will continue to be subject to the regulations or other legislation in force on the date on which the application was made. Those which are subject to the Immigration (Leave to Remain)(Prescribed Forms and Procedures) Regulations 2007 or earlier equivalent Regulations should be dealt with in accordance with those regulations and related casework instructions.
- 7.3 **Applications made between 29 February 2008 and 21 March 2008 (both dates are inclusive)**
Where an application form is specified for applications made on or after 29 February 2008 ([see 6.1 above](#)), an application on any form permitted for an application for the same

purpose immediately prior to that date will be considered to have been made on the newly specified form. For example, an application for an extension of stay as a student made on the version 04/2007 form may be accepted for 21 days after 29 February. Such an application will, however, be subject to the other requirements of paragraph 34A and will be invalid if it does not comply with them. Caseworkers should note that the previous invalidation procedure cannot be invoked for these applications – they are either valid or invalid from the outset.

7.4 The Points Based System is a new system which did not exist before 29 February 2008. Therefore there was no form in use for the same purpose immediately prior to that date and the transitional provision in paragraph 7.3 above cannot be applied.

7.5 **Applications made when forms are specified in the future**

Each time a new form is specified, the 21 day transitional arrangement described in paragraph 7.3 will apply to a form that was permitted form for such an application on the date before the new specified form comes into use.

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8. **VALIDATION**

8.1 **Applications on specified forms**

An application for which a form is specified must comply with all the relevant requirements of paragraph 34A in order to be valid. An application complying with all relevant requirements is valid and must be considered in accordance with the immigration rules or relevant policy. Applications on forms which are not specified in accordance with these rules are not subject to the requirements of paragraph 34A (see 8.7 below).

8.2 **Invalid Applications**

Applications which do not comply with the specified requirements are invalid. The rules do not specify any time limit for rejecting applications but it should be done as soon as possible. There is no longer any invalidation procedure such as that provided for in the various Regulations in force before these immigration rules. See Annex A for guidance on the validation process.

8.3 Discretion

Because the requirements for an application to be valid are specified in the immigration rules, there is an element of discretion. The requirements have been limited to things which are relatively simple to check and which applicants should normally have no difficulty in complying with. The exercise of any discretion should therefore be confined to exceptional circumstances, where satisfactory documentary evidence has been provided, where appropriate. For example, an applicant is unable to sign the form or to provide photographs because he or she is incapable of doing so because of a serious illness or accident. Or there has been an unacceptably long delay (that is, more than 3 months) before the validity of the application is considered. In such circumstances, it may be appropriate to depart from the immigration rules and accept an application as valid even though it does not comply with a specified requirement. Any such decision must be authorised by an officer of at least SEO level (Deputy Chief Caseworker or equivalent).

8.4 There is no discretion to accept an application or claim as valid by waiving a specified fee. This is because the requirements relating to the payment of fees are set down in the relevant Fees Regulations and invalidation will be according to the provisions of those Regulations rather than under the rules.

8.5 If an application is invalid because the specified photographs have not been provided, such a decision may be reviewed if the applicant makes a convincing claim that the photographs were provided. If it is decided to reverse the decision and to treat the application as valid, the date of application in such a case is the date on which it was originally made. Caseworkers must ensure that any fee paid has been retained, or request resubmission of the fee if it has been returned.

8.6 Once discretion has been exercised to accept an application as valid, in line with paragraph 8.3 or 8.5 above, consideration should continue as usual in line with the immigration rules or published policy applicable to the application.

8.7 Applications on forms which are not specified

If a form is not specified, the provisions of paragraph 34A do not apply, so an application on such a form may not be regarded as invalid under these rules (although it may be invalid under the relevant Fees Regulations if any specified fee is not paid in full). The procedure in cases where there is no specified form is to obtain any missing information or item(s) by requesting it, if this is necessary for the application to be considered properly. If a non-specified form has a personal history section, the applicant must be required to complete

that section as required if he or she has not done so. If the applicant does not provide the missing information or item(s) within a reasonable period (normally 28 days), consideration should be given to refusing the application.

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9. WITHDRAWN APPLICATIONS

9.1 Under paragraph 34J, an application for leave to remain is to be treated as withdrawn if the passport is returned for travel outside the common travel area before the application is decided. Ideally, such requests should be confirmed in writing but where the reason for travel is urgent, the passport may be returned without a written request having been received. In these circumstances, it is important to record the relevant details in the case notes. Where a passport is returned for the purposes of travel, the application is treated as withdrawn whether or not the applicant subsequently travels. No refund of the specified fee will be appropriate where an application is withdrawn.

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ANNEX A**SPECIFIED APPLICATION FORMS AND PROCEDURES – PROCESS GUIDANCE**

This annex sets out the basic process which is to be followed in validating applications.

Validation

The checklist at **Annex B** is intended to help caseworkers with the validation process. It is designed for mainstream caseworkers, rather than those in the Charging Support Team or Charging Operations in Sheffield, who will be dealing with both fee and non-fee validation issues.

Valid applications

If the application is valid, it should be marked **Valid** at the top of section 1 (or the front page of the form if different) and signed and dated by the caseworker. Consideration continues as usual.

Invalid applications

If the application is invalid, it should be marked **Invalid** at the top of section 1 (or the front page of the form if different) and signed and dated by the caseworker. The reasons for the application being invalid should also be recorded briefly in the case notes.

The application form and any accompanying photographs and documents should be returned to the applicant or immigration adviser under cover of **ICD.3676** with the relevant options selected (or **ICD.3678** or **3679** where there are fee issues).

Invalid attempt to vary an application

If an applicant attempts to vary an application without completing the form which is specified for the new purpose, the variation will be invalid and the applicant should be sent an **ICD.3677** if there is no fee issue, or an **ICD.3680** or **ICD.3681** if there is a fee issue.

If the applicant then sends in the specified form for the variation but the variation does not meet all relevant requirements of the rules (with the exception of the submission of photographs), the variation will still be invalid and the applicant should again be sent an **ICD.3677** (or **ICD.3680** or **3681** where fee issues apply).

If the original application is not varied in a valid manner within the timescale given within the letter sent to the applicant, consideration of the original application should continue.

CID OUTCOME

In all cases where an application or variation is invalid, the correct CID outcome is “**REJECT**”

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Annex B

VALIDATION CHECKLIST

The following checklist covers the basic checks which are applicable to every application, except those made online. It does not cover fee issues in an application which is otherwise valid. The checklist also assumes that the application has been delivered correctly. All references to application should be taken to also refer to a variation if applicable.

CHECK REQUIREMENTS	Reference in this IDI		
1. Is the application form one which is specified in accordance with the immigration rules?	See paragraph 2.2	Yes - continue	No - the specification rules do not apply, so the application may not be regarded as invalid
2. Is the form the currently specified version?	See paragraph 2.1 and 3.2	Yes - continue	No – the application is invalid unless the situation is covered by transitional arrangements
3. Have all relevant specified photographs been provided?	See paragraph 3.6 and 8.4	Yes - continue	No – the application is invalid (but a variation will be valid)
4. Have all specified documents been provided if there are such documents?	See paragraph 3.6	Yes - continue	No – the application is invalid (but only if it is clear that a passport or other document is mandatory)
5. Have any sections of the form designated as mandatory been completed as required?	See paragraph 3.4	Yes - continue	No – the application is invalid
6. Has the form been signed as specified?	See paragraph 3.7	Yes - continue	No – the application is invalid
7. Has the applicant included a dependant other than his/her partner or children under the age of 18, but the application otherwise complies with requirements?	See paragraph 4.1 and 4.2	No – continue.	The main applicant’s application is valid if it otherwise meets all requirements. The application of any dependant who is not a partner or child under 18 is invalid.
8. Have all the relevant requirements been complied with?	See paragraph 8.1 and 8.2	Yes - the application is valid.	No - the application is invalid.

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Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	AB	27/02/08	New instruction
2.0	AB	01/10/09	Rebranding and Inclusion of Children's Duty Reference: otherwise unchanged

