
STATUTORY INSTRUMENTS

2020 No. 61

The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

PART 2

Appeals in respect of citizens' rights immigration decisions

CHAPTER 3

Procedural matters and certification

Pending appeal

- 13.**—(1) An appeal under these Regulations is to be treated as pending during the period which—
- (a) begins when the notice of appeal is given in accordance with the relevant rules, and
 - (b) ends when the appeal is finally determined, withdrawn or abandoned (or lapses under paragraph 3 of Schedule 1).
- (2) An appeal is not finally determined for the purposes of paragraph (1)(b) while (as the case may be)—
- (a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007⁽¹⁾ could be made or is awaiting determination,
 - (b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination,
 - (c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination,
 - (d) any of the following applications could be made—
 - (i) an application for leave to appeal under section 7 of the applied 1997 Act;
 - (ii) an application for a certificate under section 7B of the applied 1997 Act;
 - (iii) an application for permission to appeal under section 7C of the applied 1997 Act⁽²⁾,or
 - (e) leave to appeal under section 7, or permission to appeal under section 7C, of the applied 1997 Act has been granted and the appeal is awaiting determination.
- (3) An appeal under these Regulations is to be treated as abandoned if the appellant (“A”) is granted leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules.
- (4) But paragraph (3) does not apply where—

(1) 2007 c. 15.

(2) Sections 7B and 7C of the 1997 Act were inserted by the Criminal Justice and Courts Act 2015 (c. 2), section 68.

- (a) A is not granted indefinite leave to enter or remain in the United Kingdom, or A's indefinite leave to enter or remain in the United Kingdom is cancelled or revoked, and
 - (b) A gives notice, in accordance with the relevant rules, that A wishes to pursue the appeal insofar as it relates to a decision not to grant A, or to cancel or revoke A's, indefinite leave to enter or remain in the United Kingdom.
- (5) An appeal under these Regulations is not to be treated as abandoned solely because the appellant leaves the United Kingdom.
- (6) In this regulation—
- “the applied 1997 Act” means the 1997 Act as it applies for the purposes of these Regulations by virtue of Part 2 of Schedule 1;
- “the relevant rules”—
- (a) where the appeal is before the Tribunal, means Tribunal Procedure Rules⁽³⁾;
 - (b) where the appeal is before the Special Immigration Appeals Commission, means rules made under section 5 of the 1997 Act, insofar as they apply in relation to an appeal under these Regulations, or rules made under section 5 of the applied 1997 Act⁽⁴⁾.

Place from which an appeal may be brought or continued: general

- 14.—(1) A person may bring or continue an appeal under these Regulations—
- (a) from within the United Kingdom, or
 - (b) from outside the United Kingdom.
- (2) Nothing in this regulation entitles a person to enter the United Kingdom for the purposes of bringing or continuing an appeal.
- (3) This regulation is subject to regulation 15.

National security decisions: place from which an appeal may be brought or continued, certification of removal etc.

15.—(1) This regulation applies where the Secretary of State certifies, under paragraph 1 or 2 of Schedule 1, that an appealable decision in relation to a person (“P”) was taken in the interests of national security.

Such a decision is referred to in this regulation as a “national security decision”.

- (2) Where this regulation applies, section 97A of the 2002 Act does not apply.
- (3) P, while in the United Kingdom, may not bring or continue an appeal under these Regulations against the national security decision unless P has made a human rights claim while in the United Kingdom.
- (4) Paragraph (3) does not allow P while in the United Kingdom to bring or continue an appeal under these Regulations if the Secretary of State certifies that removal of P—
 - (a) to the country or territory to which P is proposed to be removed, and
 - (b) despite the appeals process in relation to the national security decision not having been begun or not having been exhausted,

would not be unlawful under section 6 of the Human Rights Act 1998.

(3) See section 22 of the Tribunal, Courts and Enforcement Act 2007 (c. 15) for the meaning of “Tribunal Procedure Rules”. The relevant Tribunal Procedure Rules are currently the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (S.I. 2014/2604).

(4) The relevant rules are currently the Special Immigration Appeals Commission (Procedure) Rules 2003 (S.I. 2003/1034).

(5) The grounds upon which a certificate may be given under paragraph (4) include (in particular)

- (a) that P would not, before the appeals process in relation to the national security decision is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed;
- (b) that the whole or part of any human rights claim made by P is clearly unfounded.

(6) If a certificate in respect of P is given under paragraph (4), P may not be removed from, or required to leave, the United Kingdom in accordance with a provision of the Immigration Acts⁽⁵⁾ before the end of the relevant period except—

- (a) in a duly substantiated case of urgency,
- (b) where P is detained pursuant to the sentence or order of any court, or
- (c) where P has entered the United Kingdom and are removable as an illegal entrant under Schedule 2 to the 1971 Act.

But those exceptions do not apply at any time when the removal of P is prohibited by a direction given under paragraph (10) by the Special Immigration Appeals Commission (“the Commission”).

(7) P may make an application to the Commission to set aside the certificate.

(8) If P makes an application under paragraph (7) then the Commission, in determining whether the certificate should be set aside, must apply the principles that would be applied in judicial review proceedings.

(9) The Commission’s determination of a review under paragraph (7) is final.

(10) Where P has made and not withdrawn an application under paragraph (7), the Commission may direct that P is not to be removed from the United Kingdom at a time when the review has not been finally determined by the Commission.

(11) Sections 5 and 6 of the 1997 Act apply in relation to reviews under paragraph (7) (and to applicants for such reviews) as they apply in relation to appeals under section 2 or 2B of that Act (and to persons bringing such appeals).

(12) Any exercise of the power to make rules under section 5 of that Act in relation to reviews under paragraph (7) is to be made with a view to securing that proceedings on such reviews are handled expeditiously.

(13) For the purposes of this regulation—

“human rights claim” has the meaning given in section 113(1) of the 2002 Act;

“relevant period” means the period of one month beginning with the day on which P is notified of the decision to remove them.

Other appealable decisions: certification of removal

16.—(1) This regulation applies where—

- (a) a relevant appealable decision has been made in relation to a person (“P”), and
- (b) a decision has been made to make a deportation order under section 5(1) of the 1971 Act in respect of P (whether or not that decision is the relevant appealable decision and whether or not the order has been made).

(2) Where the deportation decision is not the relevant appealable decision mentioned in paragraph (1)(a), it does not matter for the purposes of paragraph (1)(b) whether the deportation decision is made before or after the relevant appealable decision.

(5) See the definition of “the Immigration Acts” in Schedule 1 to the Interpretation Act 1978 (c. 30).

- (3) Where this regulation applies, the Secretary of State may certify that removal of P—
- (a) to the country or territory to which P is proposed to be removed, and
 - (b) despite the appeals process in relation to the relevant appealable decision not having been begun or not having been exhausted,

would not be unlawful under section 6 of the Human Rights Act 1998.

(4) The grounds upon which a certificate may be given under paragraph (3) include (in particular) that P would not, before the appeals process in relation to the relevant appealable decision is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed.

(5) In this regulation, “relevant appealable decision” means an appealable decision other than a decision which has been certified under paragraph 1 or 2 of Schedule 1 as taken in the interests of national security.

(6) See sections 78 and 79 of the 2002 Act, as applied by Schedule 1 or 2 to these Regulations, for the consequences of certification under this regulation.