
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 1

Appeals: general

Right of appeal against decisions relating to leave to enter or remain in the United Kingdom made by virtue of residence scheme immigration rules

- 3.—(1) A person (“P”) may appeal against a decision made on or after exit day—
- (a) to vary P’s leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules⁽¹⁾, so that P does not have leave to enter or remain in the United Kingdom,
 - (b) to cancel P’s leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (c) not to grant any leave to enter or remain in the United Kingdom in response to P’s relevant application, or
 - (d) not to grant indefinite leave to enter or remain in the United Kingdom in response to P’s relevant application (where limited leave to enter or remain is granted, or P had limited leave to enter or remain when P made the relevant application).

(2) In this regulation, “relevant application” means an application for leave to enter or remain in the United Kingdom made under residence scheme immigration rules on or after exit day.

Right of appeal against decisions under section 76 of the 2002 Act to revoke indefinite leave to enter or remain by virtue of residence scheme immigration rules

4. A person may appeal against a decision made on or after exit day under section 76(1) or (2) of the 2002 Act⁽²⁾ to revoke their indefinite leave to enter or remain in the United Kingdom which was granted by virtue of residence scheme immigration rules.

Right of appeal against decisions made in connection with scheme entry clearance

5. A person may appeal against a decision made on or after exit day—
- (a) where the person applies for scheme entry clearance on or after exit day, to refuse their application,

(1) See section 17(1) of the EUWAA for the meaning of “residence scheme immigration rules”.

(2) Section 76(2) was amended by paragraph 3(3)(a) of Schedule 9 to the Immigration Act 2014 (c. 22).

- (b) to cancel or revoke their scheme entry clearance,
- (c) where they have scheme entry clearance, to refuse them leave to enter the United Kingdom under article 7(1) of the Immigration (Leave to Enter and Remain) Order 2000⁽³⁾, or
- (d) to cancel or vary leave to enter the United Kingdom which they have by virtue of having arrived in the United Kingdom with scheme entry clearance.

Right of appeal against decisions to make a deportation order

6.—(1) A person to whom paragraph (2) applies may appeal against a decision, made on or after exit day, to make a deportation order under section 5(1) of the 1971 Act in respect of them.

(2) This paragraph applies to a person who—

- (a) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, or
- (b) is in the United Kingdom (whether or not the person has entered within the meaning of section 11(1) of the 1971 Act⁽⁴⁾) having arrived with scheme entry clearance.

(3) But paragraph (2) does not apply to a person if the decision to remove that person was taken under regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016⁽⁵⁾.

(4) The references in paragraph (2) to a person who has leave to enter or remain include references to a person who would have had leave to enter or remain but for the making of a deportation order under section 5(1) of the 1971 Act.

Appeal to the Tribunal or the Special Immigration Appeals Commission

7.—(1) An appeal under these Regulations lies to the Tribunal.

(2) Except that a person may appeal to the Special Immigration Appeals Commission against an appealable decision if—

- (a) the decision is certified under paragraph 1 or 2 of Schedule 1, or
- (b) an appeal against that decision lapses by virtue of paragraph 3 of that Schedule.

(3) Schedule 1 also makes provision for the application of the 1997 Act to appeals to the Special Immigration Appeals Commission (see Part 2 of that Schedule).

Grounds of appeal

8.—(1) An appeal under these Regulations must be brought on one or both of the following two grounds.

(2) The first ground of appeal is that the decision breaches any right which the appellant has by virtue of—

- (a) Chapter 1, or Article 24(2) or 25(2) of Chapter 2, of Title II of Part 2 of the withdrawal agreement,
- (b) Chapter 1, or Article 23(2) or 24(2) of Chapter 2, of Title II of Part 2 of the EEA EFTA separation agreement, or
- (c) Part 2 of the Swiss citizens' rights agreement⁽⁶⁾.

⁽³⁾ [S.I. 2000/1161](#); to which there are amendments not relevant to these Regulations.

⁽⁴⁾ Section 11(1) was amended by the Immigration and Asylum Act 1999 (c. 33), Schedule 14, paragraph 48, the Nationality, Immigration and Asylum Act 2002, section 62(8), and the Immigration Act 2016 (c. 19), Schedule 10, paragraph 15.

⁽⁵⁾ [S.I. 2016/1052](#); relevant amending instrument is [S.I. 2019/745](#).

⁽⁶⁾ See section 39(1) of the EUWAA for the meanings of “EEA EFTA separation agreement”, “Swiss citizens’ rights agreement” and “withdrawal agreement”.

- (3) The second ground of appeal is that—
- (a) where the decision is mentioned in regulation 3(1)(a) or (b) or 5, it is not in accordance with the provision of the immigration rules by virtue of which it was made;
 - (b) where the decision is mentioned in regulation 3(1)(c) or (d), it is not in accordance with residence scheme immigration rules;
 - (c) where the decision is mentioned in regulation 4, it is not in accordance with section 76(1) or (2) of the 2002 Act (as the case may be);
 - (d) where the decision is mentioned in regulation 6, it is not in accordance with section 3(5) or (6) of the 1971 Act (as the case may be).
- (4) But this is subject to regulation 9.

Matters to be considered by the relevant authority

9.—(1) If an appellant makes a section 120 statement, the relevant authority must consider any matter raised in that statement which constitutes a specified ground of appeal against the decision appealed against.

For the purposes of this paragraph, a “specified ground of appeal” is a ground of appeal of a kind listed in regulation 8 or section 84 of the 2002 Act⁽⁷⁾.

(2) In this regulation, “section 120 statement” means a statement made under section 120 of the 2002 Act⁽⁸⁾ and includes any statement made under that section, as applied by Schedule 1 or 2 to these Regulations.

(3) For the purposes of this regulation, it does not matter whether a section 120 statement is made before or after the appeal under these Regulations is commenced.

(4) The relevant authority may also consider any matter which it thinks relevant to the substance of the decision appealed against, including a matter arising after the date of the decision.

(5) But the relevant authority must not consider a new matter without the consent of the Secretary of State.

- (6) A matter is a “new matter” if—
- (a) it constitutes a ground of appeal of a kind listed in regulation 8 or section 84 of the 2002 Act, and
 - (b) the Secretary of State has not previously considered the matter in the context of—
 - (i) the decision appealed against under these Regulations, or
 - (ii) a section 120 statement made by the appellant.

Determination of appeal

- 10.** On an appeal under these Regulations, the relevant authority must determine—
- (a) any matter raised as a ground of appeal, and
 - (b) any other matter which regulation 9 requires it to consider.

⁽⁷⁾ Section 84 was substituted by the Immigration Act 2014 (c. 22), section 15.

⁽⁸⁾ Section 120 was substituted by the Immigration Act 2014, Schedule 9, paragraph 55, and amended by the Immigration Act 2016 (c. 19), section 64.