
STATUTORY INSTRUMENTS

2020 No. 61

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

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

(2) These Regulations come into force on exit day and paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 does not apply.

Interpretation

2.—(1) In these Regulations—

“the 1971 Act” means the Immigration Act 1971(1);

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997(2);

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002(3);

“appealable decision” means a decision which may be appealed against under these Regulations;

“appellant” means a person who brings an appeal under these Regulations;

“relevant authority” means—

(a) where the appeal under these Regulations lies to the Special Immigration Appeals Commission, the Commission;

(b) otherwise, the Tribunal;

“scheme entry clearance” means entry clearance granted by virtue of relevant entry clearance immigration rules(4);

“the Tribunal” means the First-tier Tribunal.

(2) References in these Regulations to an appeal which is pending are to be read in accordance with regulation 13.

(1) 1971 c. 77.

(2) 1997 c. 68.

(3) 2002 c. 41.

(4) See section 17(2) of the European Union (Withdrawal Agreement) Act 2020 (“the EUWAA”) for the meaning of “relevant entry clearance immigration rules”; and see section 17(5) of the EUWAA for the meanings of “entry clearance” and “immigration rules”.

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⁽⁵⁾, 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⁽⁶⁾ 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,
 - (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⁽⁷⁾, 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.

⁽⁵⁾ See section 17(1) of the EUWAA for the meaning of “residence scheme immigration rules”.

⁽⁶⁾ Section 76(2) was amended by paragraph 3(3)(a) of Schedule 9 to the Immigration Act 2014 (c. 22).

⁽⁷⁾ S.I. 2000/1161; to which there are amendments not relevant to these Regulations.

- (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⁽⁸⁾) 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⁽⁹⁾.

(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⁽¹⁰⁾.

(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.

⁽⁸⁾ 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.

⁽⁹⁾ S.I. 2016/1052; relevant amending instrument is S.I. 2019/745.

⁽¹⁰⁾ See section 39(1) of the EUWAA for the meanings of “EEA EFTA separation agreement”, “Swiss citizens’ rights agreement” and “withdrawal agreement”.

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⁽¹¹⁾.

(2) In this regulation, “section 120 statement” means a statement made under section 120 of the 2002 Act⁽¹²⁾ 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.

CHAPTER 2

Appeals before the Tribunal: admission on bail and other procedural matters

Application of the 2002 Act to appeals to the Tribunal

11. Schedule 2 makes provision for the application of the 2002 Act to appeals to the Tribunal.

Admission on bail to the United Kingdom to make submissions in person in connection with an appeal

12. Schedule 3 contains provisions about admission on bail to the United Kingdom for the purposes of making submissions in person in connection with an appeal.

⁽¹¹⁾ Section 84 was substituted by the Immigration Act 2014 (c. 22), section 15.

⁽¹²⁾ Section 120 was substituted by the Immigration Act 2014, Schedule 9, paragraph 55, and amended by the Immigration Act 2016 (c. 19), section 64.

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(**13**) 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(**14**), 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—
- (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(**15**);

(13) 2007 c. 15.

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

(15) 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).

- (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⁽¹⁶⁾.

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.

(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⁽¹⁷⁾ 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.

⁽¹⁶⁾ The relevant rules are currently the Special Immigration Appeals Commission (Procedure) Rules 2003 (S.I. 2003/1034).

⁽¹⁷⁾ See the definition of “the Immigration Acts” in Schedule 1 to the Interpretation Act 1978 (c. 30).

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.

(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.

PART 3

Consequential amendments

Consequential amendments

17. Schedule 4 contains consequential amendments.

27th January 2020

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