
STATUTORY INSTRUMENTS

2020 No. 61

**EXITING THE EUROPEAN UNION
IMMIGRATION**

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

Approved by both Houses of Parliament

Made - - - - 27th January 2020

Laid before Parliament 30th January 2020

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 11(1), (3) and (4) of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020⁽¹⁾.

The instrument containing these Regulations is the first to be made under section 11 of that Act.

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⁽²⁾;

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997⁽³⁾;

(1) 2020 c. 1.
(2) 1971 c. 77.
(3) 1997 c. 68.

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002(4);

“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(5);

“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.

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(6), 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.

(4) 2002 c. 41.

(5) 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”.

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

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(7) 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(8), 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(9)) 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(10).

(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).

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

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

(9) 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.

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

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⁽¹¹⁾.

(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⁽¹²⁾.

(2) In this regulation, “section 120 statement” means a statement made under section 120 of the 2002 Act⁽¹³⁾ 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—

⁽¹¹⁾ See section 39(1) of the EUWAA for the meanings of “EEA EFTA separation agreement”, “Swiss citizens' rights agreement” and “withdrawal agreement”.

⁽¹²⁾ Section 84 was substituted by the Immigration Act 2014 (c. 22), section 15.

⁽¹³⁾ Section 120 was substituted by the Immigration Act 2014, Schedule 9, paragraph 55, and amended by the Immigration Act 2016 (c. 19), section 64.

- (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.

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⁽¹⁴⁾ 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⁽¹⁵⁾,or

⁽¹⁴⁾ 2007 c. 15.

⁽¹⁵⁾ Sections 7B and 7C of the 1997 Act were inserted by the Criminal Justice and Courts Act 2015 (c. 2), section 68.

- (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 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
 - 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”—
- where the appeal is before the Tribunal, means Tribunal Procedure Rules(16);
 - 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(17).

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

- 14.—(1) A person may bring or continue an appeal under these Regulations—
- from within the United Kingdom, or
 - 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”.

- Where this regulation applies, section 97A of the 2002 Act does not apply.
- 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.

(16) 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).

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

(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⁽¹⁸⁾ 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

⁽¹⁸⁾ See the definition of “the Immigration Acts” in Schedule 1 to the Interpretation Act 1978 (c. 30).

- (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

Brandon Lewis
Minister of State
Home Office

SCHEDULE 1

Regulation 7(2) and (3)

Appeals to the Special Immigration Appeals Commission

PART 1

Certification of appealable decisions on national security etc. grounds

Certification that decision was taken on national security etc. grounds

1.—(1) The Secretary of State may certify an appealable decision under this paragraph if it was taken—

- (a) by the Secretary of State wholly or partly on a ground listed in sub-paragraph (2), or
- (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in sub-paragraph (2).

(2) The grounds are that the person's exclusion or removal from the United Kingdom is—

- (a) in the interests of national security, or
- (b) in the interests of a relationship between the United Kingdom and another country.

(3) In this paragraph any reference to the Secretary of State is to the Secretary of State acting in person.

Certification that decision was taken on information which cannot be disclosed for reasons of national security etc.

2.—(1) The Secretary of State may certify an appealable decision under this paragraph if it was taken wholly or partly in reliance on information which the Secretary of State considers must not be made public—

- (a) in the interests of national security,
- (b) in the interests of a relationship between the United Kingdom and another country, or
- (c) otherwise in the public interest.

(2) In this paragraph any reference to the Secretary of State is to the Secretary of State acting in person.

Effect of certification: appeal pending before the Tribunal

3. Where a certificate is given under paragraph 1 or 2 in relation to a decision in respect of which an appeal is pending to the Tribunal, the appeal lapses.

PART 2

Application of the 1997 Act to appeals to the Special Immigration Appeals Commission

Application of the 1997 Act to appeals under these Regulations

4.—(1) The 1997 Act applies to an appeal to the Special Immigration Appeals Commission (“the Commission”) under these Regulations as it applies to an appeal under section 2 of that Act (subject to the modifications specified in sub-paragraphs (2) and (3)).

(2) Any reference in the 1997 Act to an appeal under section 2 of that Act, however expressed, has effect as a reference to an appeal to the Commission under these Regulations.

(3) Section 2(19) has effect as if—

(a) for subsection (2), there were substituted—

“(2) The following provisions of the Nationality, Immigration and Asylum Act 2002 apply in connection with an appeal to the Commission under the 2020 Regulations as they apply in connection with an appeal under section 82(1) of that Act, but subject to the modifications specified in subsection (2A)—

- (a) section 72;
- (b) sections 78 to 79(20);
- (c) section 105 and any regulations made under that section;
- (d) sections 112 and 113;
- (e) section 120(21).

In this section, “the 2020 Regulations” means the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020.

(2A) The modifications mentioned in subsection (2) are—

(a) section 72 has effect as if—

(i) in subsection (9), for paragraph (a), there were substituted—

“(a) a person appeals to the Commission under the 2020 Regulations against a decision and makes a section 120 statement (within the meaning of regulation 9 of those Regulations) which relies wholly or partly on the ground of appeal mentioned in section 84(1)(a) or (3)(a) of this Act (breach of the United Kingdom’s obligations under the Refugee Convention), and”;

(ii) in subsection (10), “Tribunal or” were omitted;

(b) section 78 has effect as if—

(i) in subsection (1), for “section 82(1)” there were substituted “to the Commission under the 2020 Regulations”;

(ii) after subsection (1), there were inserted—

(19) Section 2 was substituted by the Nationality, Immigration and Asylum Act 2002, Schedule 7, paragraph 20. It has been amended by the Immigration, Asylum and Nationality Act 2006 (c. 13), Schedule 1, paragraph 14, and Schedule 7, paragraph 20, the Immigration Act 2014 (c. 22) (“the 2014 Act”), Schedule 9, paragraph 2, and the Immigration Act 2016 (c. 19), section 64.

(20) Section 78A was inserted by the 2014 Act, section 2. Section 79 was amended by the UK Borders Act 2007 (c. 30), section 35(2), and the 2014 Act, Schedule 9, paragraph 32.

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

“(1A) But subsection (1) does not apply in relation to a relevant appellant.

(1B) A person is a “relevant appellant” for the purposes of this section if—

- (a) the person’s removal is certified under regulation 16(3) of the 2020 Regulations, and
- (b) the relevant appealable decision in respect of which the person’s removal is certified in accordance with that provision is the decision in relation to which the appeal to the Commission under the 2020 Regulations is pending.

(1C) A relevant appellant may not be removed from, or required to leave, the United Kingdom in accordance with a provision of the Immigration Acts⁽²²⁾ before the end of the relevant period except—

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

But those exceptions do not apply at any time when the removal of the appellant is prohibited under subsection (1F).

(1D) For the purposes of subsection (1C), “the relevant period” is the period of one month beginning with the day on which the relevant appellant is notified of the decision to remove them.

(1E) Subsection (1F) applies to a relevant appellant who applies to the appropriate court or tribunal (whether by means of judicial review or otherwise) for an interim order to suspend enforcement of the decision to remove them from the United Kingdom.

(1F) A relevant appellant to whom this subsection applies may not be removed from, or required to leave, the United Kingdom in accordance with a provision of the Immigration Acts until such time as the decision on the interim order has been taken unless—

- (a) the decision to remove them is based on a previous judicial decision,
 - (b) they have had previous access to judicial review, or
 - (c) the decision to remove them is based on imperative grounds of public security.”;
- (iii) in subsection (2), for “section 104” there were substituted “regulation 13 of the 2020 Regulations”;
 - (iv) in subsection (4), for “section 92” there were substituted “the 2020 Regulations”;
- (c) section 78A(3) has effect as if—
- (i) in paragraph (a), for “section 82” there were substituted “the 2020 Regulations”;

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

Status: This is the original version (as it was originally made).

- (ii) in paragraph (b), for “section 104” there were substituted “regulation 13 of the 2020 Regulations”;
 - (d) section 79 has effect as if —
 - (i) in subsection (1), for the words from “section 82(1)” to “relating to” there were substituted “the 2020 Regulations to the Commission against”;
 - (ii) after subsection (1), there were inserted—
 - “(1A) But subsection (1) does not prevent the Secretary of State making a deportation order in respect of a person (“P”) if—
 - (a) the decision to make the deportation order in respect of P is certified under paragraph 1 or 2 of Schedule 1 to the 2020 Regulations as taken in the interests of national security, or
 - (b) P’s removal is certified under paragraph (3) of regulation 16 of the 2020 Regulations, where the decision to make the deportation order in respect of P is the relevant appealable decision referred to in paragraph (1)(a) of that regulation in respect of which P’s removal was certified.”;
 - (iii) in subsection (2), for “section 104” there were substituted “regulation 13 of the 2020 Regulations”;
 - (e) section 105 has effect as if, in subsection (4), for the words from “means” to the end, there were substituted “has the meaning given in regulation 2 of the 2020 Regulations”;
 - (f) section 113 has effect as if, before the definition of “asylum claim”, there were inserted—
 - ““the 2020 Regulations” means the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020;”;
 - (g) section 120 has effect as if at the end of the definition of “grounds” in subsection (6) there were inserted “, or on which an appeal to the Commission under the 2020 Regulations may be brought (see regulation 8 of those Regulations)”.”;
- (b) subsections (3), (5) and (6) were omitted.

SCHEDULE 2

Regulation 11

Application of the 2002 Act to appeals to the Tribunal

Application of provisions of the 2002 Act in connection with appeals to the Tribunal

1. The following provisions of the 2002 Act apply in connection with an appeal to the Tribunal under these Regulations as they apply in connection with an appeal under section 82(1) of that Act (but subject to the general modifications specified in paragraph 2 and the specific modifications specified in paragraph 3)—

- (a) section 72(23);
- (b) sections 78 to 79;

(23) Section 72 was amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (“the 2004 Act”), Schedule 2, paragraph 17, the UK Borders Act 2007, section 39, the Immigration Act 2014 (“the 2014 Act”), Schedule 9, paragraph 31, and S.I. 2010/21.

- (c) section 105 and any regulations made under that section;
- (d) section 106 and any rules made pursuant to that section(24);
- (e) sections 107 and 108(25);
- (f) sections 112 and 113(26);
- (g) section 120.

General modifications

- 2.—(1) The provisions mentioned in paragraph 1 have effect as if—
- (a) references to “this Act”, or provisions of the 2002 Act, were references to the Act, or provisions of it, as applied by this Schedule;
 - (b) references to an appeal under section 82 or section 82(1), however expressed, were references to an appeal to the Tribunal under these Regulations;
 - (c) references to proceedings under section 82 were references to proceedings before the Tribunal under these Regulations.
- (2) But—
- (a) sub-paragraph (1)(a) does not apply to the reference to section 84 of the 2002 Act inserted by paragraph 3(2) of this Schedule;
 - (b) sub-paragraph (1) is also subject to the specific modifications made in paragraph 3.

Specific modifications

- 3.—(1) The specific modifications to the provisions of the 2002 Act are as follows.
- (2) Section 72 has effect as if—
- (a) in subsection (9), for paragraph (a), there were substituted—
 - “(a) a person appeals to the First-tier Tribunal under the 2020 Regulations against a decision and makes a section 120 statement (within the meaning of regulation 9 of those Regulations) which relies wholly or partly on the ground of appeal mentioned in section 84(1)(a) or (3)(a) of this Act (breach of the United Kingdom’s obligations under the Refugee Convention), and”;
 - (b) in subsection (10), “or Commission” were omitted.
- (3) Section 78 has effect as if—
- (a) in subsection (1), for “appeal under section 82(1)” there were substituted “appeal to the First-tier Tribunal (“the Tribunal”) under the 2020 Regulations”;
 - (b) after subsection (1), there were inserted—
 - “(1A) But subsection (1) does not apply in relation to a relevant appellant.
 - (1B) A person is a “relevant appellant” for the purposes of this section if—

(24) Section 106 was amended by the 2004 Act, Schedule 2, paragraph 21, the 2014 Act, Schedule 9, paragraph 39, and [S.I. 2010/21](#). Section 107 was amended by the 2004 Act, Schedule 2, paragraph 22, the Tribunals, Courts and Enforcement Act 2007 (c. 15) (“the 2007 Act”), Schedule 8, paragraph 54, the 2014 Act, Schedule 9, paragraph 50, and [S.I. 2010/21](#). Section 108 was amended by the 2004 Act, Schedule 2, paragraph 23, and the 2014 Act, Schedule 9, paragraph 54.

(25) Section 107 was amended by the 2004 Act, section 47 and Schedule 2, paragraph 22, the 2007 Act, Schedule 8, paragraph 54, the 2014 Act, Schedule 9, paragraph 50, and [S.I. 2010/21](#). Section 108 was amended by the 2004 Act, Schedule 2, paragraph 23, and the 2014 Act, Schedule 9, paragraph 51.

(26) Section 112 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, section 29 and Schedule 2, paragraph 24, the Immigration, Asylum and Nationality Act 2006 (c. 13) (“the 2006 Act”), section 7, the Immigration Act 2014 (“the 2014 Act”), Schedule 9, paragraph 52 and by [S.I. 2010/21](#). Section 113 was amended by the 2006 Act, section 12, and the 2014 Act, Schedule 9, paragraph 53.

Status: This is the original version (as it was originally made).

- (a) the person’s removal is certified under regulation 16(3) of the 2020 Regulations, and
- (b) the relevant appealable decision in respect of which the person’s removal is certified in accordance with that provision is the decision in relation to which the appeal to the Tribunal under the 2020 Regulations is pending.

(1C) A relevant appellant may not be removed from, or required to leave, the United Kingdom in accordance with a provision of the Immigration Acts before the end of the relevant period except—

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

But those exceptions do not apply at any time when the removal of the appellant is prohibited under subsection (1F).

(1D) For the purposes of subsection (1C), “the relevant period” is the period of one month beginning with the day on which the relevant appellant is notified of the decision to remove them.

(1E) Subsection (1F) applies to a relevant appellant who applies to the appropriate court or tribunal (whether by means of judicial review or otherwise) for an interim order to suspend enforcement of the decision to remove them from the United Kingdom.

(1F) A relevant appellant to whom this subsection applies may not be removed from, or required to leave, the United Kingdom in accordance with a provision of the Immigration Acts until such time as the decision on the interim order has been taken unless—

- (a) the decision to remove them is based on a previous judicial decision,
- (b) they have had previous access to judicial review, or
- (c) the decision to remove them is based on imperative grounds of public security.”;
- (c) in subsection (2), for “section 104” there were substituted “regulation 13 of the 2020 Regulations”;
- (d) in subsection (4), for “section 92” there were substituted “the 2020 Regulations”;
- (e) after subsection (4), there were inserted—

“(5) Nothing in this section prevents the removal from the United Kingdom of a person who is admitted to the United Kingdom on bail pursuant to Schedule 3 to the 2020 Regulations.”.

(4) Section 78A(3)(b) has effect as if for “section 104” there were substituted “regulation 13 of the 2020 Regulations”.

(5) Section 79 has effect as if—

- (a) in subsection (1), for the words from “section 82(1)” to “relating to” there were substituted “the 2020 Regulations to the First-tier Tribunal against”;
- (b) after subsection (1), there were inserted—

“(1A) But subsection (1) does not prevent the Secretary of State making a deportation order in respect of a person (“P”) if—

- (a) P’s removal is certified under regulation 16(3) of the 2020 Regulations, and
- (b) the decision to make the deportation order in respect of P is the relevant appealable decision in respect of which P’s removal was certified under that provision.”;

- (c) in subsection (2), for “section 104” there were substituted “regulation 13 of the 2020 Regulations”.
- (6) Section 105 has effect as if, in subsection (4), for the words from “means” to the end there were substituted “has the meaning given in regulation 2 of the 2020 Regulations”.
- (7) Section 106 has effect as if, in subsections (3) and (4), “or by virtue of section 109” were omitted.
- (8) Section 107(3) has effect as if “or by virtue of section 109” were omitted.
- (9) Section 113 has effect as if, before the definition of “asylum claim”, there were inserted—
““the 2020 Regulations” means the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020;”.
- (10) Section 120(6) has effect as if at the end of the definition of “grounds” in subsection (6) there were inserted “, or on which an appeal to the Tribunal under the 2020 Regulations may be brought (see regulation 8 of those Regulations)”.

SCHEDULE 3

Regulation 12

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

Application for permission to be admitted on bail to the United Kingdom to make submissions in person

1.—(1) An appellant (“A”) may apply to the Secretary of State for permission to be admitted on bail to the United Kingdom in order to make submissions in person at a hearing if the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are—

- (a) that the Secretary of State has certified A’s removal from the United Kingdom under regulation 16(3),
- (b) the hearing forms part of the proceedings on, or in connection with, an appeal to the Tribunal against the appealable decision in respect of which A’s removal was certified under regulation 16(3),
- (c) a date for the hearing has been set by the Tribunal, the Upper Tribunal or the court (as the case may be) before which the hearing is to take place, and
- (d) A is outside the United Kingdom.

(3) The Secretary of State must give such permission to A unless A’s appearance may cause serious troubles to public policy or public security.

(4) The Secretary of State must have regard to the dates on which A will be required to make submissions in person when determining—

- (a) when A is entitled to be given permission, and
- (b) the duration of A’s admission on bail, should permission be given.

(5) Nothing in this paragraph affects any power of the Secretary of State to remove A from the United Kingdom while A’s appeal is pending if—

- (a) A is admitted on bail to the United Kingdom under this paragraph, and
- (b) the relevant hearing has taken place.

Status: This is the original version (as it was originally made).

(6) If A is removed from the United Kingdom while A's appeal is pending, A is not prevented from applying for admission to the United Kingdom on bail in order to make submissions in person at any subsequent hearing in accordance with this paragraph.

Application of enactments to person given permission under paragraph 1

2.—(1) Where the Secretary of State gives an appellant (“A”) permission to be admitted on bail to the United Kingdom under paragraph 1—

(a) upon such admission, A is to be treated for the purposes of paragraphs 8, 10, 10A, 11 and 16 to 18A of Schedule 2 to the 1971 Act⁽²⁷⁾ as if they were a person refused leave to enter under that Act, and

(b) the provisions of Schedule 10 to the Immigration Act 2016 apply accordingly.

(2) Where Schedule 2 to the 1971 Act so applies, it has effect as if—

(a) the reference, in the opening words of sub-paragraph (1) of paragraph 8, to leave to enter were a reference to admission on bail pursuant to paragraph 1, and

(b) the reference in paragraph 16(1) to detention pending a decision regarding leave to enter were to detention pending submission of the appellant's case in person in accordance with paragraph 1.

(3) A is deemed not to have been admitted to the United Kingdom during any time during which A is admitted on bail to the United Kingdom pursuant to this Schedule.

(4) For the purposes of this Schedule, a person is admitted on bail to the United Kingdom if they are admitted on bail under Schedule 10 to the Immigration Act 2016, as applied by this paragraph, without having otherwise been admitted, and the expression “admission on bail” is to be construed accordingly.

(27) Paragraph 8 was amended by paragraph 9(1) of the Schedule to the Immigration Act 1988 (c. 14) and paragraph 4 of Schedule 7 to the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”); paragraph 10 was amended by paragraph 9(2) of the Schedule to the Immigration Act 1988; paragraph 10A was inserted by section 73(1) of the 2002 Act; paragraph 11 was amended by paragraph 1 of Schedule 9 to the Immigration Act 2014 (“the 2014 Act”); paragraph 16 was amended by section 140(1) of, and paragraph 60 of Schedule 14 to, the Immigration and Asylum Act 1999 (“the 1999 Act”), section 73(5) of the 2002 Act, section 42(3) of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”), section 5(2) of the 2014 Act, section 60(10) of the Immigration Act 2016, and S.I. 1993/1813; paragraph 17 was amended by paragraph 1 of Schedule 4 to the Asylum and Immigration Act 1996 (c. 49), section 140(2) of the 1999 Act, and sections 63 and 64 of the 2002 Act; paragraph 18 was amended by paragraph 61 of Schedule 14 to the 1999 Act, sections 5(3), 9 and 13(3) of, and paragraph 1 of Schedule 1 and paragraph 1(4) of Schedule 2 to, the 2014 Act; paragraph 18A was inserted by paragraph 2(1) of Schedule 1 to the 2014 Act.

SCHEDULE 4

Regulation 17

Consequential amendments

PART 1

Amendment of primary legislation

Amendment of section 3C of the Immigration Act 1971 (continuation of leave pending variation decision)

1. In section 3C of the 1971 Act(28), in subsection (2)—
 - (a) omit “or” at the end of paragraph (c);
 - (b) after that paragraph insert—
 - “(ca) an appeal could be brought under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 (“the 2020 Regulations”), while the appellant is in the United Kingdom, against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission),
 - (cb) an appeal under the 2020 Regulations against that decision, brought while the appellant is in the United Kingdom, is pending (within the meaning of those Regulations), or”.

Amendment of section 2C of the Special Immigration Appeals Commission Act 1997 (jurisdiction: review of certain exclusion decisions)

- 2.—(1) Section 2C of the 1997 Act(29) is amended as follows.
 - (2) In subsection (1), after “non-EEA national”, in both places where it appears, insert “or relevant person”.
 - (3) In subsection (2), after “non-EEA national” insert “or relevant person”.
 - (4) In subsection (5), after the definition of “non-EEA national”, insert—

““relevant person” has the same meaning as it has for the purposes of section 11(2)(f) and (g) of the European Union (Withdrawal Agreement) Act 2020 (see section 11(7) of that Act);”.

PART 2

Amendment of subordinate legislation

Amendment of the Immigration (Notices) Regulations 2003

- 3.—(1) The Immigration (Notices) Regulations 2003(30) are amended as follows.
 - (2) In regulation 2, after the definition of “the 2002 Act” insert—

““citizens’ rights immigration decision” means a decision which can be appealed against under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020.”

(28) Section 3C was inserted by the Immigration and Asylum Act 1999, section 3, and substituted by the Nationality, Immigration and Asylum Act 2002, section 118. It was amended by the Immigration, Asylum and Nationality Act 2006, section 11, the Immigration Act 2014, Schedule 9, paragraph 21, and the Immigration Act 2016, section 62.

(29) Section 2C was inserted by the Justice and Security Act 2013 (c. 18), section 15.

(30) S.I. 2003/658, as amended by S.I. 2006/2168 and 2014/2768. There are other amending instruments but none is relevant.

Status: This is the original version (as it was originally made).

(3) In regulation 4, in paragraph (1), for “or any EEA decision” substitute “, any EEA decision or any citizens’ rights immigration decision”.

Amendment of the Special Immigration Appeals Commission (Procedure) Rules 2003

4.—(1) The Special Immigration Appeals Commission (Procedure) Rules 2003⁽³¹⁾ are amended as follows.

(2) In rule 2, after the definition of “the 2016 Act”⁽³²⁾, insert—

““the 2020 Regulations” means the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020;”.

(3) In rule 6⁽³³⁾—

(a) omit the “and” at the end of paragraph (a);

(b) after that paragraph, insert—

“(aa) appeals to the Commission under regulation 7 of the 2020 Regulations; and”

(4) In rule 7⁽³⁴⁾, in paragraph (1), after “the 2002 Act”, insert “or regulation 7 of the 2020 Regulations”.

(5) In rule 8⁽³⁵⁾—

(a) in paragraph (1), for “or section 97A(3) of the 2002 Act” substitute “, section 97A(3) of the 2002 Act or regulation 7 of the 2020 Regulations”;

(b) in paragraph (2), in sub-paragraph (b), after “Act”, insert “or regulation 15 of the 2020 Regulations”;

(c) after paragraph (4A), insert—

“(4B) Paragraph (4C) applies where—

(a) an appellant (“A”) applies for an administrative review of an appealable decision (“the original decision”) under the relevant rules, and

(b) A had not, before A receives notice of the decision on administrative review, given a notice of appeal to the Commission under regulation 7 of the 2020 Regulations against the original decision.

(4C) Where this paragraph applies, A must give a notice of appeal to the Commission under regulation 7 of the 2020 Regulations against the original decision—

(a) if A is in detention under the Immigration Acts, not later than 5 days after A receives the notice of the decision on administrative review;

(b) otherwise—

(i) if A is in the United Kingdom, not later than 10 days after A receives the notice of the decision on administrative review, or

(ii) if A is outside the United Kingdom, subject to paragraph (4D), not later than 28 days after A receives the notice of the decision on administrative review.

(4D) Where A—

(a) is in the United Kingdom when A receives the notice of the decision on administrative review, and

⁽³¹⁾ [S.I. 2003/1034](#).

⁽³²⁾ The definition of “the 2016 Act” was inserted by [S.I. 2018/736](#).

⁽³³⁾ Rule 6 was substituted by [S.I. 2013/2995](#). It was amended by [S.I. 2015/867](#).

⁽³⁴⁾ Rule 7 was amended by [S.I. 2007/1285](#). There are other amending instruments but none is relevant.

⁽³⁵⁾ Rule 8 was amended by [S.I. 2007/1285](#) and [2013/2995](#).

(b) may not appeal against the original decision while in the United Kingdom by reason of regulation 15 of the 2020 Regulations,

a notice of appeal against the original decision must be given not later than 28 days after A's departure from the United Kingdom.

(4E) In this rule—

“appealable decision” has the meaning given in regulation 2 of the 2020 Regulations;

“relevant rules” means residence scheme immigration rules or relevant entry clearance immigration rules (within the meanings given in section 17 of the European Union (Withdrawal Agreement) Act 2020).”

(6) In rule 12(36)—

(a) the existing paragraph is renumbered as paragraph (1) of that rule;

(b) in paragraph (1) (as renumbered), in sub-paragraph (a)(i), after “the 2002 Act” insert “or regulation 13(3) of the 2020 Regulations”;

(c) after that paragraph, insert—

“(2) A party to an appeal under the 2020 Regulations must notify the Commission if they are aware that the appeal is to be treated as abandoned under regulation 13 of those Regulations.

(3) Where an appeal would otherwise be treated as abandoned under regulation 13(3) of the 2020 Regulations but the appellant wishes to pursue their appeal, the appellant must provide a notice to the Commission and to each other party within the relevant period.

(4) For the purposes of paragraph (3), “the relevant period” is the period of 28 days beginning with the day on which the appellant was sent notice of the grant of leave to enter or remain in the United Kingdom.”

Amendment of the Tribunal Procedure (Upper Tribunal) Rules 2008

5.—(1) The Tribunal Procedure (Upper Tribunal) Rules 2008(37) are amended as follows.

(2) In rule 1, in paragraph (3), in the definition of “immigration case”—

(a) omit “or” before “regulation 26”,

(b) after “asylum case” insert “, or the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020”.

(3) In rule 17A—

(a) after paragraph (1) insert—

“(1A) A party to an appeal under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 (“the 2020 Regulations”) before the Upper Tribunal must also notify the Upper Tribunal if they are aware that the appeal is to be treated as abandoned under regulation 13(3) of those Regulations.”;

(b) in paragraph (2), after “Regulations 2006” insert “or regulation 13(3) of the 2020 Regulations”;

(c) in paragraph (3), after “Act 2002”, insert “or regulation 13(3) of the 2020 Regulations”.

(36) Rule 12 has been amended by S.I. 2007/1285, 2013/2995 and 2015/867.

(37) S.I. 2008/2698, as amended by S.I. 2010/44 and 2013/2067. There are other amending instruments but none is relevant.

Amendment of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

6.—(1) The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014⁽³⁸⁾ are amended as follows.

(2) In rule 1, after the definition of “the 2007 Act” insert—
 ““the 2020 Regulations” means the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020;”.

(3) In rule 16—
 (a) after paragraph (1) insert—
 “(1A) A party to an appeal under the 2020 Regulations must also notify the Tribunal if they are aware that the appeal is to be treated as abandoned under regulation 13 of those Regulations.”;
 (b) in paragraph (2), after “2006 Regulations” insert “or regulation 13(3) of the 2020 Regulations”;
 (c) in paragraph (3), after “the 2002 Act” insert “or regulation 13(3) of the 2020 Regulations”.

(4) In rule 19, after paragraph (3), insert—
 “(3A) But paragraphs (2) and (3) do not apply in relation to the bringing of an appeal against a citizens’ rights immigration decision.
 “A citizens’ rights immigration decision” is a decision which can be appealed against under the 2020 Regulations.

(3B) The notice of appeal in relation to an appeal against a citizens’ rights immigration decision must be received—

- (a) if the person is in the United Kingdom, not later than 14 days after the appellant is sent the notice of the decision;
- (b) if the person is outside the United Kingdom, not later than 28 days after the appellant receives the notice of the decision.

But this paragraph is subject to paragraph (3D).

(3C) Paragraph (3D) applies where—

- (a) a person (“P”) applies for an administrative review of a citizens’ rights immigration decision (“the original decision”) under the relevant rules, and
- (b) P had not, before P receives notice of the decision on administrative review, started proceedings in relation to the original decision.

(3D) Where this paragraph applies, the notice of appeal against the original decision must be received—

- (a) if P is in the United Kingdom, not later than 14 days after P is sent the notice of the decision on administrative review;
- (b) if P is outside the United Kingdom, not later than 28 days after P receives the notice of the decision on administrative review.

(3E) In this rule, “the relevant rules” means residence scheme immigration rules or relevant entry clearance immigration rules (within the meanings given in section 17 of the European Union (Withdrawal Agreement) Act 2020).”.

⁽³⁸⁾ S.I. 2014/2604, to which there are amendments not relevant to this instrument.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument is made under Part 3 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). It is the first instrument to be made under section 11 of that Act.

These Regulations make provision for appeals in connection with various immigration decisions which relate to, or are connected to, leave to enter or remain in the United Kingdom granted under residence scheme immigration rules or relevant entry clearance immigration rules. “Residence scheme immigration rules” and “relevant entry clearance immigration rules” are defined in section 17 of the 2020 Act.

Part 1 of these Regulations contains general provisions.

Part 2 of these Regulations makes provision for the relevant appeals.

Chapter 1 of that Part sets out the rights of appeal in connection with the immigration decisions mentioned above, the grounds on which an appeal may be brought and the matters to be determined by the appeal body.

An appeal under these Regulations must generally be made to the First-tier Tribunal (“the Tribunal”). However, if an appeal is certified by the Secretary of State under Part 1 of Schedule 1 to the Regulations, the appeal must be made to the Special Immigration Appeals Commission (“the Commission”) (regulation 7). An appeal may be certified, for example, in the interests of national security or the public interest. Any appeal which is certified after the relevant proceedings in the Tribunal have started will lapse automatically (paragraph 3 of Schedule 1). The appeal must then be made to the Commission.

Part 2 of Schedule 1 to the Regulations applies various provisions of the Special Immigration Appeals Commission Act 1997 (c. 68) and the Nationality, Immigration and Asylum Act 2002 (c.41) (“the 2002 Act”) (with modifications) for the purposes of appeals to the Commission.

Chapter 2 of Part 2 of the Regulations makes specific provision in connection with appeals before the Tribunal. Various provisions of the 2002 Act are applied (with modifications) for the purposes of appeals to the Tribunal (regulation 11 and Schedule 2). Provision is also made for an appellant who has brought an appeal from outside the United Kingdom to, in certain circumstances, apply to the Secretary of State to be admitted on bail to the United Kingdom in order to make submissions in person in connection with an appeal (regulation 12 and Schedule 3).

Chapter 3 of Part 2 of the Regulations deals with procedural matters relevant to appeals before both the Tribunal and the Commission. Regulation 13 sets out when an appeal under these Regulations is to be treated as pending. Regulations 14 to 16 make provision about the place from which appeals may be brought and certification.

Part 3 of the Regulations makes various amendments to primary and secondary legislation in consequence of the provisions made by the Regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.