

**EXPLANATORY MEMORANDUM TO**  
**THE IMMIGRATION (CITIZENS' RIGHTS APPEALS) (EU EXIT) (AMENDMENT)**  
**REGULATIONS 2023**

**2023 No. 441**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
- 1.3 This Explanatory Memorandum refers to “EEA citizens” to mean citizens of the European Union (EU) countries and of other constituent countries of the European Economic Area (EEA) (Iceland, Liechtenstein and Norway) and of Switzerland.

**2. Purpose of the instrument**

- 2.1 The purpose of the instrument is to amend the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020. The amendments will: (i) extend a right of appeal to EU Settlement Scheme (EUSS)<sup>1</sup> decisions where the relevant application was made before EU exit and the decision is made after the regulations come into force; (ii) extend leave during the appeals process where a person’s EUSS status is curtailed or revoked; and (iii) provide a new certification power which can be applied in EUSS cases involving abuse of rights or fraud.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 Regrettably, the convention of laying 21 days before the instrument comes into force was not met due to an internal administrative error relating to processing prior to laying. Notwithstanding this, there is a need for the provisions to facilitate effective operation of the EU Settlement Scheme and to ensure the Secretary of State has appropriate powers to deal with cases that employ fraud or seek to abuse rights. Mindful of the importance of the 21 day period, we have taken steps to help enable scrutiny within the nineteen day period before this instrument comes into force.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

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<sup>1</sup> The EUSS enables EEA and Swiss citizens resident in the UK before the end of the post-EU exit transition period at 11pm on 31 December 2020, and their family members, to obtain a UK immigration status.

## **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 This instrument is made under the powers conferred by section 11(1) and (4) of, and paragraph 12 of schedule 4 to, the European Union (Withdrawal Agreement) Act 2020. It amends the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, which provide a range of appeal rights against decisions refusing EEA citizens or their family members residence status or otherwise restricting their entry and residence rights under the Withdrawal Agreement, the EEA European Free Trade Association Separation Agreement or the Swiss Citizens' Rights Agreement ('the Agreements').

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ('the 2020 Regulations') give effect to the judicial remedies required under the Agreements. This instrument amends the 2020 Regulations.
- 7.2 Regulation 3 provides a right of appeal to those who applied to the EUSS under Appendix EU to the Immigration Rules before the 2020 Regulations came into force on exit day (31 January 2020) where a decision on their application is made on or after the commencement of this instrument (8 May 2023). The EUSS opened, before exit day, on 30 March 2019. The 2020 Regulations commenced on exit day and gave a right of appeal for refusal decisions made in respect of applications made on or after that date. Previously, a person whose pre-exit day application was refused could re-apply to the scheme and they would obtain a right of appeal. However, now the principal deadline for the scheme (30 June 2021) has passed, it is considered appropriate to provide any outstanding applications made before exit day with a right of appeal where their application is decided after this instrument comes into force.
- 7.3 Regulation 4 provides that where pre-settled or settled status under the EUSS is curtailed or revoked and the person has entered and is in the UK on that date, their leave will be extended whilst an in-time appeal could be brought or their appeal is pending, unless their removal is certified. The Agreements provide that such decisions attract a right of appeal, but, in contrast to decisions to refuse residence status, they do not provide an extension of residence rights until the outcome of the appeal. Therefore, as a matter of domestic policy, this instrument extends leave for those persons, pending the outcome of the appeal.
- 7.4 Where leave is extended by this regulation, it is not possible for the person to apply for a different type of leave under the Immigration Rules. Where a person with leave extended by this regulation departs the UK while their appeal is pending, their leave will continue to run until their appeal is concluded, subject to the lapsing provisions of the Immigration (Leave to Enter and Remain) Order 2000.
- 7.5 Regulation 5 is a technical amendment to the 2020 Regulations. Where a citizens' rights appeal has been certified under regulation 15 (national security decisions), it allows a subsequent human rights claim which attracts a right of appeal under the

Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') to be certified under section 97A of the 2002 Act.

- 7.6 Regulation 6 creates a power to certify a person's removal where they have sought to abuse rights or use fraud in connection with their EUSS application. The certification means that the person can be removed before the conclusion of their appeal where this would not be unlawful under section 6 of the Human Rights Act 1998. The power is designed to implement Article 20(4) of the Withdrawal Agreement, and equivalent provision in the other Agreements, which permits the host State to remove a person who has submitted a fraudulent or abusive application before the conclusion of any appeal.
- 7.7 Regulation 7 makes minor consequential amendments to Schedules 1, 2 and 3 to the 2020 Regulations in respect of the new certification power created by regulation 6.

### ***Explanations***

#### *What did any law do before the changes to be made by this instrument?*

- 7.8 The 2020 Regulations made provision for rights of appeal as required by the Agreements. This instrument makes some amendments to the 2020 Regulations.

#### *Why is it being changed?*

- 7.9 Please refer to sections 7.1 to 7.7.

#### *What will it now do?*

- 7.10 This instrument will amend the 2020 Regulations as specified in sections 7.1 to 7.7.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act, but does relate to the withdrawal of the United Kingdom from the European Union because it concerns citizens' rights under the Agreements.

## **9. Consolidation**

- 9.1 Consolidation does not apply to any aspect of this statutory instrument.

## **10. Consultation outcome**

- 10.1 No consultation was required for this statutory instrument. This is because it amends the 2020 Regulations in line with the UK's domestic implementation of the Agreements or makes technical or consequential amendments.

## **11. Guidance**

- 11.1 Existing published guidance will be amended to reflect the provisions in this instrument. It will be published on GOV.UK.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no additional costs or benefits are imposed on businesses or the public sector.

**13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

**14. Monitoring & review**

14.1 The approach to monitoring of this instrument is that this will be conducted internally by the Home Office.

14.2 The instrument does not include a statutory review clause.

**15. Contact**

15.1 Sam Murray at the Home Office, email: sam.murray@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Nicola Smith, Deputy Director, EEA Citizens' Rights & Hong Kong Unit at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Murray of Blidworth, Parliamentary Under Secretary of State at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.