

2023 No. 441

EXITING THE EUROPEAN UNION

IMMIGRATION

**The Immigration (Citizens' Rights Appeals) (EU Exit)
(Amendment) Regulations 2023**

<i>Made</i> - - - -	<i>13th April 2023</i>
<i>Laid before Parliament</i>	<i>19th April 2023</i>
<i>Coming into force</i> - -	<i>8th May 2023</i>

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Immigration (Citizens' Rights Appeals) (EU Exit) (Amendment) Regulations 2023.

(2) These Regulations come into force on 8th May 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Amendment of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

2. The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020(b) are amended in accordance with regulations 3 to 7.

Amendment to regulation 3

3. In regulation 3 (right of appeal: residence scheme immigration rules), for paragraph (2) substitute—

“(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—

(a) on or after exit day, or

(b) before exit day if a decision is made on that application on or after 8th May 2023.”.

(a) 2020 c. 1.

(b) S.I. 2020/61, amended by S.I. 2020/1213 and 2020/1372.

New regulation 13A (continuation of leave during specified appeals)

4. After regulation 13 (pending appeal), insert—

“Continuation of leave during specified appeals

13A—(1) This regulation applies where—

- (a) a relevant appealable decision has been made in relation to a person (“P”),
- (b) P has entered and is in the United Kingdom at the date of the relevant appealable decision, and
- (c) the Secretary of State has not certified P’s removal under regulation 15(4), 16(3) or 16A(3).

(2) P’s leave to enter or remain is extended during any period when an appeal against the relevant appealable decision could be brought (ignoring the possibility of an appeal out of time with permission) or is pending.

(3) P may not make an application for variation of their leave to enter or remain in the United Kingdom while their leave is extended by this regulation.

(4) In this regulation, “relevant appealable decision” means an appealable decision as described in regulation 3(1)(a) or regulation 4.

(5) Leave extended by this regulation remains subject to Part IV of the Immigration (Leave to Enter and Remain) Order 2000(a).”.

Amendment to regulation 15

5. In regulation 15 (national security decisions), omit paragraph (2).

New regulation 16A (other appealable decisions: certification of removal in cases of abuse of rights or fraud)

6. After regulation 16 (other appealable decisions: certification of removal), insert—

“Other appealable decisions: certification of removal in cases of abuse of rights or fraud

16A—(1) This regulation applies where a relevant appealable decision has been made in relation to a person (“P”) and that decision was taken by the Secretary of State, whether in whole or in part, because of abuse of rights or fraud.

(2) For the purposes of this regulation, abuse of rights or fraud includes:

- (a) entering, attempting to enter, or assisting another person to enter or attempt to enter, a marriage, civil partnership or durable partnership of convenience, or
- (b) fraudulently obtaining or attempting to obtain, or assisting another fraudulently to obtain or to attempt to obtain, entry clearance under relevant entry clearance immigration rules(b) or leave to enter or remain in the United Kingdom under residence scheme immigration rules(c).

(3) Where this regulation applies, the Secretary of State may certify that removal of P—

(a) S.I. 2000/1161, amended by S.I. 2015/434, 2016/1132, 2019/686 and 2020/1353.

(b) See section 17(2) of the European Union (Withdrawal Agreement) Act 2020 (c. 1) for the meaning of “relevant entry clearance immigration rules”.

(c) See section 17(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1) for the meaning of “residence scheme immigration rules”.

- (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 having not been begun or not having been exhausted,

would not be unlawful under section 6 of the Human Rights Act 1998^(a).

(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.”.

Amendments to schedules

7.—(1) In Schedule 1, in paragraph 4(3)(a) (application of the 1997 Act to appeals to the Special Immigration Appeals Commission)^(b), in inserted subsection (1B)(a), after “regulation 16(3)” insert “or 16A(3)”.

(2) In Schedule 2, in paragraph 3(3)(b) (application of the 2002 Act to appeals to the Tribunal: specific modifications)^(c), in inserted subsection (1B)(a), after “regulation 16(3)” insert “or 16A(3)”.

(3) In Schedule 3, in paragraph 1(2) (application for permission to be admitted on bail to make submissions), in paragraphs (a) and (b), after “regulation 16(3)” insert “or 16A(3)”.

13th April 2023

Chris Philp
Minister of State
Home Office

(a) 1998 c. 42.

(b) Paragraph 4(3)(a) makes non-textual modifications to section 78 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

(c) Paragraph 3(3)(b) makes non-textual modifications to section 78 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ("the 2020 Regulations").

Regulation 3 extends the right of appeal in regulation 3 of the 2020 Regulations to applications made before exit day if a decision is made on the application after these Regulations come into force.

Regulation 4 adds a new regulation 13A to the 2020 Regulations. This regulation applies to decisions to curtail or revoke leave under residence scheme immigration rules where the person has entered and is in the United Kingdom at the date of the decision and their removal has not been certified. In such circumstances, the regulation extends the person's leave whilst an appeal could be brought or is pending.

Regulation 5 removes regulation 15(2) from the 2020 Regulations.

Regulation 6 adds a new certification power to the 2020 Regulations. The power allows for certification of removal in cases of abuse of rights or fraud.

Regulation 7 makes consequential amendments to the schedules to the 2020 Regulations.

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

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