Draft Regulations laid before Parliament under section 55(5) of the Sanctions and Anti-Money Laundering Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2020 No.

EXITING THE EUROPEAN UNION

IMMIGRATION

The Immigration (Persons Designated under Sanctions Regulations) (EU Exit) Regulations 2020

Made - - - - 2020

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 48(4) and 54(1)(a) and (2) of the Sanctions and Anti-Money Laundering Act 2018(**a**), makes the following Regulations.

In accordance with section 55(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Immigration (Persons Designated under Sanctions Regulations) (EU Exit) Regulations 2020 and come into force on the twenty-first day after the day on which they are made.

Interpretation

2. In these Regulations—

"the 1971 Act" means the Immigration Act 1971(**b**);

"the 2018 Act" means the Sanctions and Anti-Money Laundering Act 2018;

"sanctions regulations" means regulations under section 1 of the 2018 Act.

Effect of immigration designation: persons lawfully in the United Kingdom

3.—(1) Paragraph (2) applies if—

(a) a person is the subject of an immigration designation(**c**); and

(b) at the time of the designation, the person is lawfully in the United Kingdom.

(**a**) 2018 c. 13.
(**b**) 1971 c. 77.
(**c**) See the definition in section 48(1) of the Sanctions and Anti-Money Laundering Act 2018 ("the 2018 Act").

(2) The person is to be treated as a person falling within subsection (5A)(a) of section 8B of the 1971 Act(**a**)—

(a) for a period beginning with the day on which the designation is made and ending with the expiry of 20 working days from the day on which the designation is notified to that person in accordance with the sanctions regulations under which it is made; and

(b) if within that period the person makes an immigration claim, until the person is given notice of the appropriate Minister's decision on it.

(3) Paragraph (2)(b) does not apply for the purposes of considering, and making a decision on, the person's immigration claim.

(4) In calculating the expiry of 20 working days for the purposes of paragraph (2)(a), the day on which the person is notified of the designation is to be included; and for that purpose a reference to the day on which the person is notified includes a reference to the day on which, in accordance with the sanctions regulations in question, the person is to be taken to have been notified.

(5) In this regulation "working day" means any day except a Saturday or Sunday or a day which is a bank holiday in any part of the United Kingdom under section 1 of the Banking and Financial Dealings Act 1971(**b**).

Treatment and determination of immigration claims

4.—(1) In a case to which paragraph (2) of regulation 3 applies, if an immigration claim is not made within the period provided for in sub-paragraph (a) of that paragraph the appropriate Minister may give a direction for the enforcement of the effect of the person's immigration designation.

(2) On consideration of an immigration claim, the appropriate Minister may decide—

(a) to approve the claim in whole or in part;

(b) so far as it is not approved, to refuse the claim.

(3) A decision to approve an immigration claim is to be treated as a decision under the Immigration Acts.

Effect of approval of an immigration claim

5. If the appropriate Minister approves an immigration claim, the notice of the decision must state whether the person concerned is to be treated, for the purposes of section 8B of the 1971 Act, as—

(a) a person falling within sub-paragraph (i) of subsection (5A)(a) of that section;

(b) a person falling within sub-paragraph (ii) of that provision, or

(c) a person falling within each of those sub-paragraphs.

Treatment of refusal of immigration claim etc.

6.—(1) A decision to refuse an immigration claim is to be treated as if it were a decision of the Secretary of State appealable under section 82(1) of the Nationality, Immigration and Asylum Act 2002(**c**).

(**a**) Section 8B was inserted by section 8 of the Immigration and Asylum Act 1999 (c. 33) and was amended by section 76(3) to (9) of the Immigration Act 2016 (c. 19) and by paragraph 1 of Schedule 3 to the 2018 Act.

(**b**) 1971 c. 80. Schedule 1 to that Act (bank holidays), which is introduced by section 1 of that Act, was amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

(**c**) 2002 c. 41; section 82 was substituted by section 15(2) of the Immigration Act 2014 (c. 22).

(2) So far as the claim was based on representations concerning a breach of the United Kingdom's obligations under the Human Rights Convention(**a**), the appeal is to be treated as an appeal under section 82(1)(b) of that Act.

(3) So far as the claim was based on representations concerning a breach of United Kingdom's obligations under the Refugee Convention(**b**) it is to be treated as an appeal under section 82(1)(a) of that Act.

(4) A decision under regulation 4(1) to give a direction for the enforcement of the effect of an immigration designation is to be treated as if it were a decision of the Secretary of State appealable under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

(5) If a decision is treated as an appealable decision as a result of paragraph (1) or (4) and the person concerned was lawfully in the United Kingdom at the time of the immigration designation, that person may not be required to leave or be removed from the United Kingdom before the expiry of the period within which an appeal may be instituted (ignoring any possibility of an appeal out of time with permission).

Modification of Part 5 of the Nationality, Immigration and Asylum Act 2002

7. For the purposes of an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 by virtue of these Regulations, section 85 of that Act(**c**) (matters to be considered) has effect as if, after subsection (6), there were inserted the following subsections—

> "(7) Nothing in subsection (4) permits the Tribunal to consider the validity of a decision to make or vary, or to refuse to revoke or vary, the immigration designation of an appellant.
>
> (8) In subsection (7) "immigration designation" has the meaning given in section 48(1) of the Sanctions and Anti-Money Laundering Act 2018.".

Immigration appeals and court reviews under section 38 of the 2018 Act

8.—(1) For the purposes of proceedings on an application under section 38 of the 2018 Act, the High Court, or Court of Session in Scotland, is—

(a) not to consider any matter concerning or arising from a decision on an immigration claim which has been or could be raised on an appeal which is pending or could be instituted under section 82 of the Nationality, Immigration and Asylum Act 2002 by virtue of these Regulations; and

(b) bound by any determination disposing of such an appeal.

(2) For the purposes of paragraph (1), the question of whether an appeal is pending is to be determined in accordance with section 104 of the Nationality, Immigration and Asylum Act 2002(**d**).

Name
Minister of State
Home Office

Date

(**a**) By virtue of section 48(5) of the 2018 Act, section 8B of the 1971 Act and section 167(1) of the Immigration and Asylum Act 1999, "the Human Rights Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom.

(**b**) By virtue of section 48(5) of the 2018 Act, section 8B of the 1971 Act and section 167(1) of the Immigration and Asylum Act 1999, "the Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28th July 1961 and the Protocol to the Convention.

(**c**) Relevant amendments were made by paragraph 18 of Schedule 2 to the Immigration and Asylum (Treatment of Claimants, etc.) Act 2004 (c. 19) and section 15(5) of, and paragraph 34 of Schedule 9 to, the Immigration Act 2014 (c. 22).

(**d**) Section 104 was amended by paragraph 20 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 9 of the Immigration, Asylum and Nationality Act 2006 (c. 13), paragraph 47 of Schedule 9 to the Immigration Act 2014 and S.I. 2010/21.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to immigration sanctions made under the Sanctions and Anti-Money Laundering Act 2018.

In particular, regulations 3 to 5 provide for a case where a person is designated as excluded from the United Kingdom, at a time when the person is lawfully there.

Regulations 6 to 8 ensure that the process of consideration of a human rights or protection claim by a person subject to a sanction is kept distinct from the review and challenge mechanisms for the sanction itself.

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

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