EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (APPEALS) (CONSEQUENTIAL AMENDMENTS AND SAVING PROVISION) ORDER 2015

2015 No. 383

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

   This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

2.1. The Immigration (Appeals) (Consequential Amendments and Saving Provision) Order 2015 makes amendments to various secondary legislation which are consequential on the changes to Part 5 of the Nationality, Immigration and Asylum Act 2002[1]("the 2002 Act") as made by Part 2 of the Immigration Act 2014[2]("the 2014 Act").

2.2. This Order is subject to the negative resolution procedure.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None

4. Legislative Context

4.1. Section 15 of the 2014 Act replaces section 82 of the 2002 Act and repeals sections 83 and 83A. The new section 82 provides that a right of appeal to the Tribunal will arise where the Secretary of State has decided to refuse a protection claim, or a human rights claim, or to revoke previously granted protection status. Section 15 was brought into force from 20 October 2014, subject to saving and transitional provisions, by the Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014[3]. Those saving provisions are substantially amended from 6 April 2015 by the Immigration Act 2014 (Commencement No. 4, Transitional and Saving Provisions and Amendment) Order 2015 with the result that the changes to the immigration appeals system will be fully in force, subject to

[1] 2002 c.41
[2] 2014 c.22
[3] S.I. 2014/2771

continuing saving provisions for certain persons who made an application for leave to remain before the 2014 Act was in force.

4.2. Within schedule 9 to the 2014 Act there are various consequential amendments to primary legislation that arise from changes to the immigration appeals system. However, the Act has not made consequential amendment to any secondary legislation, instead providing an order making power in section 72 to provide for this.

5. Territorial Extent and Application

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1. The 2014 Act repeals sections 83 and 83A of the 2002 Act. Articles 2 and 3 of this Order make consequential amendment to the Asylum (Procedures) Regulations 2007[4] and the Appeals (Excluded Decisions) Order 2009[5] to delete references to these sections.

7.2. Article 4 of this Order makes consequential amendment to The UK Border Agency (Complaints and Misconduct) Regulations 2010[6]. These regulations provide for the Independent Police Complaints Commission (IPCC) to have oversight of serious complaints and conduct matters (including incidents where a death or serious injury has taken place) that arise as a result of Home Office officers, officials and contractors exercising certain functions in relation to immigration, asylum and customs. Regulation 2 defines the enforcement functions within the scope of the regulations and excludes appealable decisions because faults in the decision should be considered by the Tribunal rather than the IPCC. The list of appealable decisions is amended to reflect the changes to appeal rights made by the 2014 Act.

7.3. There remain other references to the immigration appeals system in other secondary legislation that are not amended by this Order. It has been agreed with the Tribunal

[4] S.I. 2007/3187 (as amended)
[5] S.I. 2009/275 (as amended)
[6] S.I. 2010/782

Procedure Committee that changes necessary to the Tribunal Procedure (Upper Tribunal) Rules 2008[7] will be managed separately through the Committee's regular process of review and updating of procedure rules. There are also changes needed to the Immigration (European Economic Area) Regulations 2006[8] to ensure that the appeals system for EEA decisions is consistent with the changes made by the 2014 Act. These regulations will be updated separately.

8. Consultation outcome

8.1. There has not been a public consultation exercise. The amendments are only as a consequence of the 2014 Act.

9. Guidance

9.1. The Home Office produces guidance on appeals which is available on the website at

https://www.gov.uk/government/organisations/uk-visas-and-immigration.

9.2. The guidance is updated as required to reflect changes to legislation, policy and procedure.

10. Impact

10.1. An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2. The impact on the public sector is minimal.

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring & review

12.1. The Home Office will keep the implementation of the 2014 Act under review.

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[7] S.I. 2008/2698 (as amended)
[8] S.I. 2006/1003

13. Contact

13.1. Andrew Elliot at the Home Office can be contacted with queries regarding this instrument, at Andrew.Elliot8@homeoffice.gsi.gov.uk or 020 7035 6190.