EXPLANATORY MEMORANDUM TO

THE IMMIGRATION APPEALS (FAMILY VISITOR) REGULATIONS 2012

2012 No. 1532

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

2. Purpose of the instruments

2.1 These Regulations set out the circumstances in which a person has a full right of appeal against refusal of an application for entry clearance as a visitor to the UK. In order to have an appeal right the applicant must be a member of the immediate family of the person he seeks to visit, as specified in the regulations, or their partner, as defined in regulations, and the family member must have settled, refugee or humanitarian protection status in the UK.

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

3.1 None.

4. Legislative Context

4.1 Primary legislation removes full appeal rights against a refusal of entry clearance except where the application was made for the purpose of visiting a class of person prescribed by regulations or entering as a dependant in circumstances prescribed by regulations (section 88A of the Immigration, Asylum and Nationality Act 2002). These regulations prescribe the class or description of persons to be visited so that those applying for a visa to visit a family member have a full appeal right in certain circumstances.

4.2 A previous provision (section 90 of the Immigration, Asylum and Nationality Act 2002) restricted the full right of appeal for visitors to the UK to those persons applying for entry clearance for the purpose of visiting a member of the applicant's family, as prescribed in regulations made under that provision. These regulations make use of an additional power in section 88A which also enables provision to be made by reference to the circumstances of the person being visited, which must be satisfied for the full right of appeal to apply.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 Appeal rights for persons applying to visit family members in the UK are being restricted. These regulations remove the appeal right from those visiting an aunt, uncle, niece, nephew or a first cousin in the UK, as previously allowed under the Immigration Appeals (Family Visitor) Regulations 2003. They also introduce a requirement that the family member who the applicant seeks to visit has to have settled, refugee or humanitarian protection status in the UK. It is the government's view that it is particularly excessive that a full right of appeal should exist where the applicant is seeking to visit a person who is themselves only in the UK on a temporary basis.

7.2 This change will reduce the volume of appeals against refusal of visa applications to visit a family member in the UK ("family visit visa appeals"), which currently account for around a third of all immigration appeals. It is estimated that the volume of family visit visa appeals will be reduced by 20-40%. This will result in savings of approximately £0.9m in 2012/13.

7.3 The change is being made in advance of the removal of the full appeal right, which, with parliamentary approval, is expected to happen by 2014. There is a shared rationale between the policies, namely that by reducing the volume of family visit visa appeals in the system;

- disproportionate cost to the UK taxpayer will be reduced
- resource will be freed up to give priority to appeal cases that have a greater impact for the individuals concerned and for the public at large, for example asylum claims, settlement claims and the deportation of foreign criminals

7.4 The Crime and Courts Bill, introduced to Parliament on 10 May, includes a clause (Clause 24) that will remove the provision under which these regulations are being made, thereby removing all full rights of appeal for visitor applications The Government believes these regulations are reasonable interim reforms which go some way to achieving the policy objectives prior to the full appeal right being removed.

7.5 Applicants excluded from appealing by these regulations will have the option to re-apply. Around 60% of appeals are allowed because the applicant submits further evidence on appeal, which should be submitted as part of a further application. An application is quicker than appealing (the majority of applications are decided within 15 days, compared to up to 8 months for an appeal to be decided) and cheaper (£78 compared to £80/£140 to submit a paper/oral appeal). They would also be able to bring an application for judicial review.

8. Consultation outcome

8.1 These regulations have not been specifically consulted on. However, the UK Border Agency consultation *Family migration – a consultation* ran between July and October 2011 which considered whether the full right of appeal should be retained, along with other proposed measures on family migration. The consultation did not specifically propose to introduce these new regulations, but it did consult on proposals that go further i.e. removal of the full appeal right.

8.2 39% of those who responded to the question on retaining the family visit visa appeal right felt that beyond race discrimination and human rights grounds the appeal right should not be retained.

8.3 The UK Border Agency is also taking action in response to some of the concerns raised in the consultation, around the visit visa application process. The UK Border Agency has implemented all accepted recommendations from the reports of the Independent Chief Inspector of the UK Border Agency concerning entry clearance operations. We will continue to work with the Chief Inspector to identify areas for improvement in the handling of visa applications and build on the improvements that have already resulted from inspections. The UK Border Agency already publishes supporting documents guidance specifically for family visitors which is regularly updated. The visitor visa guidance is also translated into 6 languages: Arabic, Chinese, Hindi, Russian, Thai and Turkish. Changes will be made to the family visit application form setting out more clearly the information needed from customers and to help visa officers.

9. Guidance

9.1 Communications that accompanied publication of the Crime and Courts Bill on 11 May, and announced the government's intention to remove the family visit visa appeal right, also contained information on the changes being made through these regulations. Communications were widely circulated in the UK and overseas, to staff and external partners.

9.2 Because family visit visa applications currently attract a right of appeal, new guidance is not required, but existing overseas guidance for both staff and applicants and application forms will be updated to reflect the descriptions of family members specified in the new regulations. Presenting staff will also be provided with updated guidance.

10. Impact

10.1 The impact on business, charities and voluntary bodies is estimated to be minimal. There may be some impact on airlines and the tourist industry as visitor numbers vary.

10.2 The impact on the public sector is a saving of £0.9m in 2012/13.

10.3 The Family Migration Impact Assessment covers the impact of these changes.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

a. The success criteria for these regulations is a reduction in family visit visa appeal volumes. This will be monitored by the UK Border Agency and HM Courts & Tribunals Service using existing monthly reports and bilateral meetings. The data source will be management information collected by HM Courts & Tribunals Service.

b. Impact on individual application refusals made by those who no longer have a full appeal right will be assessed via regular entry clearance manager reviews and will also fall within the remit of the Independent Chief Inspector of the UK Border Agency to monitor decision quality on immigration routes that do not attract a full right of appeal.

13. Contact

Eldon Ward at the UK Border Agency Tel: 020 8196 0603 or email: eldon.ward@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.