EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (CITIZENS' RIGHTS APPEALS) (EU EXIT) (AMENDMENT) REGULATIONS 2025

2025 No. 639

1. Introduction

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

2. Declaration

2.1 Dame Angela Eagle MP, Minister for Border Security and Asylum at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

2.2 Dr Sam Worby, Deputy Director, Simplification and Systems Unit at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jonathan Wright at the Home Office can be contacted by email, at Jonathan.Wright8@homeoffice.gov.uk, with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (CRA Regulations 2020). This amendment to the CRA Regulations 2020 simplifies the appeals process for persons who have permission to remain in the UK under the EU Settlement Scheme (EUSS) and who are subject to deportation action under the Immigration Act 1971.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) in which the instrument forms part of the law) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.

5. Policy Context

What is being done and why?

5.1 The CRA Regulations 2020 establish a range of appeal rights for those who apply under the EUSS, including for those whose rights under the scheme are restricted. This is required by the UK's obligations under the Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement ("the Agreements").

5.2 Appeals under the CRA Regulations 2020 are made to the Immigration and Asylum Chamber of the First-tier Tribunal, with an onward right of appeal to the Upper

Tribunal with permission and on a point of law. The only exception is where the appeal is certified on the grounds of national security, in the interests of a relationship between the UK and another country or otherwise in the public interest (under the CRA Regulations 2020). In these cases, the appeal will be made to the Special Immigration Appeals Commission (SIAC).

5.3 A person who has permission to remain in the UK under the EUSS, and who is subject to deportation action commenced under the Immigration Act 1971, currently has two separate opportunities to raise an appeal.

5.4 First, a person in receipt of a decision to make a deportation order under section 5(1) of the Immigration Act 1971 has a right of appeal against that decision under regulation 6 of the CRA Regulations 2020 or under regulation 36(1) of the Immigration (European Economic Area) Regulations 2016 (as saved). The time limits to appeal under the CRA Regulations are set out in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. An appeal against the decision to make a deportation order must be made within 14 days.

5.5 Second, a person may also have a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002) if they make a human rights or protection claim that is refused by the Secretary of State. A person who receives a decision to make a deportation order against them, including those with permission under the EUSS, is invited to make representations to the Secretary of State as to why they should not be deported. Where a person raises a human rights or protection claim that is refused, they have 14 days to bring an appeal (unless the claim can be certified so that there is no right of appeal). The right of appeal under section 82 of the NIAA 2002 is also to the Immigration and Asylum Chamber of the First-tier Tribunal, unless the appeal is certified under section 97(1) of the NIAA 2002 on the grounds of national security, in the interests of a relationship between the UK and another country or otherwise in the public interest, which would instead mean that the appeal would be to the SIAC.

5.6 Therefore, a person who has permission under the EUSS and is subject to deportation may have two separate rights of appeal which arise at different times and may have two separate hearings relating to their deportation.

5.7 The Secretary of State currently seeks to decide human rights and protection claims before the appeal relating to the decision to make a deportation order is heard, so that any appeal against a refusal of a human rights or protection claim can be heard at the same time as the appeal against a decision to make a deportation order. However, where this is not possible, the appeal against the decision to make a deportation order will proceed on its own and risks being premature if the human rights or protection claim needs to be assessed to determine whether deportation would be lawful. Where this leads to adjournments or separate hearings, this is an inefficient use of Home Office resources and judicial time, as well as being unsatisfactory for the person bringing the appeals.

What was the previous policy, how is this different?

5.8 The previous policy position was that an appeal under the CRA Regulations 2020 was triggered by the service of a decision to make a deportation order before any representations had been received or considered as to why the person ought not to be deported.

5.9 This change means that now, when a decision to make a deportation order is made, the right of appeal under the CRA Regulations 2020 will instead arise after the person

has been given an opportunity to make representations against the decision to make a deportation order. Where the individual makes no representations, the individual will be able to appeal against the decision to make a deportation order under the CRA Regulations 2020 after the deadline has passed for the person to make representations.

5.10 Where the person raises a human rights or protection claim as part of the representations, and these claims are refused, the point a person can appeal the decision to make a deportation order under the CRA Regulations 2020 will be at the same time the person can appeal the refusal of their human rights or protection claim under section 82 of the NIAA 2002.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends regulation 6 of the CRA Regulations 2020 so that, where a person is subject to deportation action, instead of the appeal right being triggered on receipt of the decision to make a deportation order only, it will be triggered after both the decision to make a deportation order has been served and any deadline the person has been given to make a human rights or protection claim against deportation has passed. In the circumstance where such human rights or protection claim are made, the appeal right under the CRA Regulations 2020 will be triggered after the Secretary of State has refused such claims.

Why was this approach taken to change the law?

6.2 This is the only way to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 There was no public consultation on the changes. The changes do not substantively change appeal rights, and the impacts of the change primarily affect Home Office operations, reducing the burden on them by removing the need to produce two appeal bundles.

8. Applicable Guidance

8.1 The rights of appeal guidance published on Gov.UK will be amended to reflect the changes in this instrument when it is laid on 4 June 2025.[1]

9. Impact Assessment

9.1 An Impact Assessment has not been prepared for this instrument because there is no impact on businesses or wider economic impact as the change relates solely to when a person can appeal a decision to make a deportation order, and it does not change the scope of those subject to deportation or who can appeal. With regards the public sector, the changes are limited to streamlining Home Office operations and ensuring judicial resources are maximised by having only one appeal hearing.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies

9.3 The legislation does not impact small or micro businesses.

[1] https://www.gov.uk/government/publications/appeals/rights-of-appeal-accessible

9.4 The impact on the public sector is that it will allow for a more efficient appeal process for the Home Office and the Immigration and Asylum Chamber, by ensuring that an appeal against a deportation decision and against the refusal of any human rights or protection claim can be listed and heard in one appeal.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Home Office will monitor the impact on deportation and human rights and protection appeals as set out in this order.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Dame Angela Eagle MP, Minister for Border Security and Asylum, has made the following statement:

"Appeals in relation to deportation are kept under regular review. It is not appropriate in the circumstances to make provision for review. I am satisfied that this instrument does not impact on small businesses."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because it concerns appeal rights that are required by the Withdrawal Agreement.