EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (NOTICES) (AMENDMENT) REGULATIONS 2014

2014 No. 2768

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 Instrument

2.1. The Immigration (Notices) Regulations 2003[1] ("the 2003 Regulations") make provision about how persons are to be given notice of decisions where the decision has a right of appeal. Those Regulations are amended by the Immigration (Notices) (Amendment) Regulations 2014 ("the 2014 Regulations") to make changes which are a consequence of the appeals measures in the Immigration Act 2014[2] ("the 2014 Act") and the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014[3] ("the 2014 Procedure Rules").

2.2. The 2014 Regulations are 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 Nationality, Immigration and Asylum Act 2002[4]("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 is being 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. The 2014 Regulations ensure that persons continue to be given notice of decisions that attract a right of appeal after these changes have taken effect.

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[1] S.I. 2003/658 (as amended)
[2] 2014 c.22
[3] S.I. 2014/2604
[4] 2002 c.41

4.2. The 2014 Procedure Rules change the way the time limit to bring an appeal is calculated. The 2014 Regulations make consequential changes to avoid confusion in how these time limits apply.

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 2003 Regulations govern the circumstances in which a person or his representative must be notified of an appealable decision under Part 5 of the 2002 Act or under the Immigration (European Economic Area) Regulations 2006[5]. They also govern the information that the notice of decision must contain.

7.2. Regulation 4 of the 2003 Regulations specifies the circumstances in which a written notice of decision must be provided, and is amended to reflect the changes to the 2002 Act made by the 2014 Act which is now being brought into force. A written notice must be given when a decision is appealable under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

7.3. Regulation 5 of the 2003 Regulations specifies the contents of the notice to be given, and is also amended to reflect the 2014 Act changes to rights of appeal in section 82 of the 2002 Act and the grounds of appeal in section 84 as well as the effect of the repeal of sections 87 to 91 and 98, save for regulation 5(4) which is being amended for other reasons set out below.

7.4. Regulation 5(4) states that a decision notice must be accompanied by a "notice of appeal" as prescribed in Tribunal Procedure Rules as well as information on how to send the notice by post or fax. This regulation is being updated to require information on how to appeal to be provided but the provision of copies of paper forms will no longer be mandatory. This is because the preferred method of giving notice of appeal is online (https://immigrationappealsonline.justice.gov.uk/)

[5] S.I. 2006/1003 (as amended)

although the Tribunal will continue to accept paper forms which will continue to be made available.

7.5. Regulation 7 makes provision about service of notice and is amended to reflect changes to the 2014 Procedure Rules. The 2014 Procedure Rules replace the Asylum and Immigration Tribunal (Procedure) Rules 2005[6] ("the 2005 Procedure Rules"). Under rule 7(1) of the 2005 Procedure Rules, the time limit to appeal by a person who is in the United Kingdom started when the decision against which s/he is appealing was *served*. Under rule 19(2) of the 2014 Procedure Rules the time limit to appeal by a person who is in the United Kingdom starts when the decision against which s/he is appealing was *sent*. The 2003 Regulations defined when a notice was served, but as service is no longer relevant to the calculation of time periods the 2014 Regulations make necessary consequential amendments, deleting regulation 7(4)(a), 7(5)(b) and 7(6).

7.6. Where a person cannot be located the decision is deemed to be given in accordance with regulation 7(2), which involves entering a record of the attempts to give notice and placing the notice on file. When a person is located, s/he will be given a copy of the notice. The time limit to appeal may have expired but the person may still seek to bring a late appeal under rule 20 of the 2014 Procedure Rules, providing reasons as to why the Home Office was unable to locate them to give the notice earlier. For the avoidance of doubt, new regulation 7(3)(b) has been inserted to confirm the procedure for calculating time-limits in these cases.

7.7. The transitional provision provides that the amendments to regulations 4 and 5 (other than the amendment to regulation 5(4)) applies to appeals brought under section 82(1) of the 2002 Act as amended by section 15 of the 2014 Act.

8. Consultation outcome

8.1. There has not been a public consultation exercise on the 2014 Regulations. The amendments as a consequence of the 2014 Act and the 2014 Procedure Rules are technical and consequential. The Tribunal Procedure Committee ran a 12-week public consultation exercise on the Procedure Rules during the spring of 2013. The response to the consultation will be published on the Committee's website: (http://www.justice.gov.uk/about/tribunal-procedure-committee).

[6] S.I. 2005/230 (as amended)

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. A Regulatory 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 Regulations continually under review.

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.