

EXPLANATORY MEMORANDUM TO
THE CITIZENS' RIGHTS (RESTRICTIONS OF RIGHTS OF ENTRY AND
RESIDENCE) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 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 purpose of this instrument is to give effect to the UK's obligations under article 20 of the EU Withdrawal Agreement, article 19 of the EEA EFTA Separation Agreement and article 17 of the Swiss Citizens' Rights Agreement ('the Agreements') insofar as they apply to deportation decisions. These provisions require the UK to consider conduct committed before the end of the transition period in accordance with Chapter VI of Directive 2004/38/EC (or in the case of the Swiss Citizens' Rights Agreement, Article 5 of Annex 1 to the Agreement between the European Community and its Member States and the Swiss Confederation on the Free Movement of Persons ('FMOPA')), when deporting a person protected by the citizens' rights provisions of those agreements. The instrument also extends these protections to persons protected by the UK's domestic implementation of those agreements.
- 2.2 This instrument also ensures that deportation decisions made in accordance with these protections continue to be appealable in accordance with the UK's obligations under article 21 of the EU Withdrawal Agreement, article 20 of the EEA EFTA Separation Agreement and article 8 of the Swiss Citizens' Rights Agreement, and continue to interact appropriately with immigration law.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 42 of the European Union (Withdrawal Agreement) Act 2020) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 Kevin Foster MP, Minister for Future Borders and Immigration, has made the following statement regarding Human Rights:

“In my view the provisions of the Citizens’ Rights (Restrictions of Rights and Entry) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Subject to Parliament’s agreement, the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (‘the Bill’) will end freedom of movement to the UK for EEA nationals and their family members on 31 December 2020. It will do this by revoking the Immigration (European Economic Area) Regulations 2016 (‘the EEA Regulations’). The EEA Regulations implement Directive 2004/38/EC and FMOPA.
- 6.2 Amendments have already been made by section 10 of the European Union (Withdrawal Agreement) Act 2020 to section 3 of the Immigration Act 1971 and section 33 of the UK Borders Act 2007 to ensure that the deportation powers at section 3(5) and section 3(6) of the Immigration Act 1971 (including automatic deportation) are exercised in a way that is compatible with the Agreements.
- 6.3 Alongside this instrument, the Government is today laying two other statutory instruments under the European Union (Withdrawal Agreement) Act 2020: The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 and The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

7. Policy background

What is being done and why?

- 7.1 This instrument saves and modifies relevant provisions in the EEA Regulations in order to enable certain deportation decisions to continue to be made in accordance with Chapter VI of Directive 2004/38/EC and Article 5 of Annex 1 to FMOPA after the EEA Regulations are revoked. This means that deportation decisions can continue to be made on the grounds of public policy, public security or public health in respect of persons covered by the savings. This instrument also saves and modifies relevant provisions in the EEA Regulations in order to ensure that these decisions continue to be appealable and interact appropriately with immigration law.
- 7.2 The savings cover persons protected by the Agreements or the UK’s domestic implementation of the Agreements, in particular persons with EU Settlement Scheme status, persons in the UK having arrived with an EU Settlement Scheme family permit, persons with a right to enter the UK for the purpose of a continuing course of healthcare and persons who have entered the UK with entry clearance granted by virtue of their right to enter the UK as a Swiss service provider.
- 7.3 This instrument also amends section 3 of the Immigration Act 1971 and section 33 of the UK Borders Act 2007 in order to extend the protections inserted by section 10 of the European Union (Withdrawal Agreement) Act 2020 to persons in the UK having arrived with entry clearance granted by virtue of their right to enter the UK as a Swiss service provider.
- 7.4 This instrument comes into force when the EEA Regulations are revoked.

8. Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because it implements obligations in the Agreements. It is being made under the European Union (Withdrawal Agreement) Act 2020.

9. Consolidation

9.1 There is currently no proposal to produce a consolidated version of the EEA Regulations as saved and modified by this instrument.

10. Consultation outcome

10.1 A public consultation has not been conducted in the preparation of the instrument, because it implements the UK's obligations under the Agreements insofar as they apply to deportation.

11. Guidance

11.1 The Home Office will publish guidance for the public and caseworkers.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for it to be monitored internally by the Home Office.

14.2 This regulation does not include a statutory review clause.

15. Contact

15.1 Alison Bennett at the Home Office, Telephone: 07770 738856 or email: Alison.Bennett@homeoffice.gov.uk can answer any queries regarding the instrument.

15.2 Matthew Bligh at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.