

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONALITY AND BORDERS ACT 2022 (CONSEQUENTIAL**  
**AMENDMENTS) REGULATIONS 2023**

**2023 No. 1129**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Secretary of State for the Home Department ('SSHD') and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

2.1 The purpose of the amendment to the Immigration (Removal of Family Members) Regulations 2014 ('Family Regulations') is to ensure that they continue to apply to family members of individuals who are liable to be removed from the UK.

2.2 The purpose of the amendment to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 is to amend the timeframe during which the Secretary of State's consent must be sought by the First-tier Tribunal to grant bail for a person subject to removal directions, from 14 to 21 days.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

**4. Extent and Territorial Application**

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

6.1 Section 10 of the Immigration and Asylum Act 1999 ('s.10') gives the SSHD the power to remove people who are unlawfully in the UK and their family members. Section 46 of the Nationality and Borders Act 2022 ('s.46') amends s.10.

6.2 The Family Regulations currently make reference to 's.10(1)'. The amendment will update the Family Regulations so that the reference is to the entirety of s.10 rather than just s.10(1). This change will allow the Family Regulations to continue to apply to family members of those individuals liable to removal from the UK. The amendment will make sure that the connection between the Family Regulations and s.10 remains intact.

- 6.3 As a consequence of certain provisions in the Nationality and Borders Act 2022 now coming into force, Paragraph 3(4) of Schedule 10 to the Immigration Act 2016 now sets out that the First-tier Tribunal cannot grant bail to a person who is detained without the consent of the Secretary of State if directions for the persons removal are in force and within 21 days. Paragraph 41(5) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 also references the bail consent process, and the previous 14-day timeframe that applied. This now needs to be amended to ensure that the Tribunal Procedure Rules are consistent with the 21-day timeframe in Schedule 10 to the Immigration Act 2016.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Currently s.10 gives the SSHD the power to remove people who are unlawfully in the UK and their family members, provided those family members are given a written notice of intention to remove.
- 7.2 The Family Regulations govern the service of this notice. More specifically, they set out the possible methods of service and the deemed date of service.
- 7.3 There are no legislative alternatives because s.46 amends s.10. An SI is required to amend the Family Regulations.
- 7.4 The Family Regulations are already in place. The amendment in the SI does not make a substantive change to the text of the Family Regulations nor does it introduce any new laws.
- 7.5 The amendment to the Family Regulations is being made to ensure that it remains valid and relevant when s.46 comes into force.
- 7.6 After the amendment, the Family Regulations will continue to operate as they do now. The scope of those to whom the Family Regulations applies to will not change.
- 7.7 As a consequence of the Nationality and Borders Act 2022, Paragraph 3(4) of Schedule 10 to the Immigration Act 2016 amended the timeframe during which the Secretary of State's consent must be sought by the First-tier Tribunal to grant bail, for a person who is detained with removal directions set, from 14 days to 21 days. This timeframe was changed to ensure consistency between the immigration bail processes and the removal notice process in section 46 of Nationality and Borders Act 2022.
- 7.8 The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 also references the bail consent process outlined above, and the previous 14-day timeframe that applied. This now needs to be amended to the 21-day timeframe to ensure the Tribunal Procedure Rules are consistent with Schedule 10 to the Immigration Act 2014, which the Rules follow in regard to bail.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 The amendment to the Family Regulations does not alter another instrument. Therefore, there is no requirement for any consolidation of instruments.

## **10. Consultation outcome**

- 10.1 No specific consultation in relation to the amendment to the Family Regulations has been done. This is because s.46 was passed through parliament without any amendments and minimal critique.
- 10.2 MPs from the House of Commons during the Committee stage of the Nationality and Borders Bill 2022 scrutinised s.46 on 28th October 2021. The then clause was voted to stand part of the Bill in the Committee.
- 10.3 Peers were engaged with as part of the line-by-line scrutiny of the Nationality and Borders Bill on 8th February 2022. S.46 passed through the House of Lords without any amendments. The then clause was voted to stand part of the Bill in the Committee.
- 10.4 The then Nationality and Borders bill was scrutinised by JCHR. The Ninth Report - Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement was published on 1st December 2021. Nothing specific regarding the service of notices was raised in the report.
- 10.5 No consultation was carried out with the Devolved Administration because the amendment to the Family Regulations relates to a reserved matter that affects all of the UK.

## **11. Guidance**

- 11.1 Specific guidance in relation to the amendment to the Family Regulations is not required as it does not change the effect of the law rather it ensures alignment with s.10.
- 11.2 There will however be new publicly available guidance in relation to s.10, which will be published on gov.uk on 20th November 2023. This guidance will set out how s.10 will operate and what the new statutory requirements will be from 20th November 2023 onwards.

## **12. Impact**

- 12.1 The amendment to the Family Regulations has no, or no significant, impact on business, charities or voluntary bodies. This is because the amendment will ensure alignment with s.10 and thus not alter the status quo.
- 12.2 The amendment to the Family Regulations has no, or no significant, impact on the public sector. This is because the amendment will ensure alignment with s.10 and thus not alter the status quo.
- 12.3 A full Impact Assessment has not been prepared for the amendment to the Family Regulation because no impact on business is foreseen.

## **13. Regulating small business**

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

## **14. Monitoring & review**

- 14.1 There are no plans to monitor or review the amendment to Family Regulations because the amendment does not change the status quo. It only ensures the continued

application of the Family Regulations to family members of those liable to be removed under s.10.

**15. Contact**

- 15.1 Sukanya Deshraj at the Home Office Telephone: 07776506877 or email: sukanya.deshraj@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Bligh, Deputy Director for Enforcement and Criminality Policy, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister for Immigration, Robert Jenrick MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.