
STATUTORY INSTRUMENTS

2000 No. 2326

The Immigration (European Economic Area) Regulations 2000

Part VII

Appeals

Interpretation of Part VII

27.—(1) In this Part—

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997(1);

“adjudicator” and “Commission” have the same meaning as in the 1999 Act;

“Refugee Convention” has the same meaning as in the 1999 Act.

(2) In this Part, “EEA decision” means a decision under these Regulations, or under Regulation 1251/70, which concerns a person's—

(a) removal from the United Kingdom;

(b) entitlement to be admitted to the United Kingdom; or

(c) entitlement to be issued with or to have renewed, or not to have revoked, a residence permit or residence document.

(3) For the purposes of this Part, a decision-maker acts in breach of a person's human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by section 6(1) of the Human Rights Act 1998(2).

Scope of Part VII

28. This Part applies to persons who have, or who claim to have, rights under these Regulations or under Regulation 1251/70.

Appeal rights

29.—(1) Subject to section 80(12) of the 1999 Act (requirement to produce a valid national identity card or passport), and to regulation 33, a person may appeal under these Regulations against an EEA decision.

(2) Such an appeal may in particular be made on the ground that, in taking the decision, the decision-maker acted in breach of that person's human rights.

(3) Except where an appeal lies to the Commission as a result of regulation 31, an appeal under these Regulations lies to an adjudicator.

(4) Schedule 4 to the 1999 Act (appeals), to the extent (and with the modifications) set out in Schedule 2 to these Regulations, has effect in relation to appeals to the adjudicator under these Regulations.

(1) 1997 c. 68.

(2) 1998 c. 42.

Out-of-country appeals

30.—(1) Regulation 29 does not entitle a person to appeal while he is in the United Kingdom against an EEA decision—

- (a) to refuse to admit him to the United Kingdom;
- (b) to refuse to revoke a deportation order made against him;
- (c) to refuse to issue him with an EEA family permit.

(2) Paragraph (1) also applies to a decision to remove someone from the United Kingdom which is consequent upon a refusal to admit him.

(3) But paragraphs (1)(a) and (2) do not apply—

- (a) where the right of appeal is to the Commission;
- (b) where a ground of the appeal is that, in taking the decision, the decision-maker acted in breach of the appellant’s human rights; or
- (c) where the person held an EEA family permit, or a residence permit or residence document, on his arrival in the United Kingdom.

Appeals to the Commission

31.—(1) An appeal in respect of an EEA decision mentioned in regulation 27(2)(a) lies to the Commission where paragraph (2) applies.

(2) This paragraph applies if the ground of the decision to remove the person concerned was that his removal is conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature.

(3) An appeal in respect of an EEA decision mentioned in regulation 27(2)(b) lies to the Commission where paragraph (4) applies.

(4) This paragraph applies if—

- (a) the Secretary of State certifies that directions have been given by the Secretary of State (and not by a person acting under his authority) for the person concerned not to be admitted to the United Kingdom on the ground that his exclusion is conducive to the public good; or
- (b) admission was refused in compliance with any such directions.

(5) An appeal in respect of an EEA decision mentioned in regulation 27(2)(c) lies to the Commission where paragraph (6) applies.

(6) This paragraph applies where the decision was taken in connection with an EEA decision mentioned in regulation 27(2)(a) or (b) in respect of which an appeal lies to the Commission in accordance with this regulation.

Amendments to the 1997 Act

32.—(1) The 1997 Act is amended as follows.

(2) In section 2 (appellate jurisdiction of the Commission), for subsection (1) substitute—

“(1) A person may appeal to the Special Immigration Appeals Commission against a decision which he would be entitled to appeal against under Part IV of the Immigration and Asylum Act 1999 (“the 1999 Act”) but for a public interest provision.

(1A) Subsection (1) does not apply to an appeal under section 59(2) of the 1999 Act.

(1B) “Public interest provision” means any of sections 60(9), 62(4), 64(1) or (2) or 70(1) to (6) of the 1999 Act.

(1C) A reference in this Act to an appeal under this section includes a reference to an appeal under regulation 29(1) of the Immigration (European Economic Area) Regulations 2000 (other than on the ground mentioned in paragraph (2) of that regulation) which lies to the Commission as a result of regulation 31 of those Regulations.”.

(3) In section 2A (jurisdiction: human rights)(3), after subsection (6) insert—

“(7) “Appealable decision” means a decision against which a person would be entitled to appeal under Part IV of the 1999 Act but for a public interest provision.

(8) “The 1999 Act” and “public interest provision” have the same meaning as in section 2.

(9) A reference in this Act to an appeal under this section includes a reference to an appeal under regulation 29(1) of the Immigration (European Economic Area) Regulations 2000, on the ground mentioned in paragraph (2) of that regulation, which lies to the Commission as a result of regulation 31 of those Regulations.”.

(4) Schedule 14 to the 1999 Act (consequential amendments)(4) is amended as follows—

(a) paragraph 119 is repealed;

(b) paragraph 121 is repealed in so far as it relates to the insertion of subsections (7) and (8) of section 2A in the 1997 Act.

Proof of family membership

33. Where for the purposes of an appeal under these Regulations a person claims to be the family member of another person, he must produce—

(a) an EEA family permit; or

(b) other proof that he is related as claimed to that other person.

Effects of appeals to the adjudicator

34.—(1) If a person in the United Kingdom appeals under regulation 29 against an EEA decision to refuse to admit him to the United Kingdom, any directions previously given by virtue of the refusal for his removal from the United Kingdom cease to have effect, except in so far as they have already been carried out, and no directions may be so given while the appeal is pending.

(2) If a person appeals under regulation 29 against an EEA decision to remove him from the United Kingdom, any directions given under section 10 of the 1999 Act or Schedule 3 of the 1971 Act(5) for his removal from the United Kingdom are to have no effect, except in so far as they have already been carried out, while the appeal is pending.

(3) But the provisions of Part I of Schedule 2, or as the case may be, Schedule 3 to the 1971 Act with respect to detention and persons liable to detention apply to a person appealing under regulation 29 against a refusal to admit him or a decision to remove him as if there were in force directions for his removal from the United Kingdom, except that he may not be detained on board a ship or aircraft so as to compel him to leave the United Kingdom while the appeal is pending.

(4) In calculating the period of two months limited by paragraph 8(2) of Schedule 2 to the 1971 Act for—

(a) the giving of directions under that paragraph for the removal of a person from the United Kingdom, and

(3) Subsections (1) to (6) of section 2A were inserted by paragraph 121 of Schedule 14 to the 1999 Act.

(4) Paragraphs 119 and 121 of Schedule 14 provide for consequential amendments to the 1997 Act which are in part superseded by the provisions of this regulation.

(5) Schedule 3 has been amended by the Criminal Justice Act 1982 (c. 48); the Immigration Act 1988 (c. 14); the Asylum and Immigration Act 1996 (c. 49); and the 1999 Act.

(b) the giving of a notice of intention to give such directions, any period during which there is pending an appeal by him under regulation 29 is to be disregarded.

(5) If a person appeals under regulation 29 against an EEA decision to remove him from the United Kingdom, a deportation order is not to be made against him under section 5 of the 1971 Act⁽⁶⁾ while the appeal is pending.

(6) Paragraph 29 of Schedule 2 to the 1971 Act (grant of bail pending appeal) applies to a person who has an appeal pending under regulation 29 as it applies to a person who has an appeal pending under section 59, 65, 66, 67, 69(1) or (5) or 71 of the 1999 Act.

(7) For the purposes of this regulation, and subject to paragraphs (8) and (9), an appeal is to be treated as pending during the period beginning when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.

(8) An appeal is not to be treated as finally determined while a further appeal may be brought; and, if such a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.

(9) A pending appeal is not to be treated as abandoned solely because the appellant leaves the United Kingdom.

(10) This regulation does not apply to an appeal which lies to the Commission as a result of regulation 31.

Transitional provisions (EEA decisions)

35.—(1) Regulation 29 does not have effect in relation to an EEA decision made before 2nd October 2000.

(2) Notwithstanding the revocation of the Immigration (European Economic Area) Order 1994⁽⁷⁾ by regulation 1(2)—

- (a) articles 15(1) and 20(2)(b) of the Order continue to have effect where the decision to exclude a person from the United Kingdom was made before 2nd October 2000;
- (b) articles 15(2) and 20(2)(d) continue to have effect where the decision to remove a person from the United Kingdom was made before 2nd October 2000;
- (c) articles 18 and 20(2)(c) continue to have effect where the decision to refuse or withdraw a residence permit or residence document was made before 2nd October 2000.

Transitional provisions (the 1997 Act)

36.—(1) Regulation 32 does not have effect in relation to any decision made before 2nd October 2000.

(2) In relation to such decisions, section 2(1) of the 1997 Act continues to have effect without the amendments made by regulation 32.

(3) Section 2(1)(c) of the 1997 Act (appeals against a decision to make a deportation order) continues to have effect without the amendments made by regulation 32 in relation to any person—

- (a) who applied during the regularisation period fixed by section 9 of the 1999 Act, in accordance with the Immigration (Regularisation Period for Overstayers) Regulations 2000⁽⁸⁾, for leave to remain in the United Kingdom; and

⁽⁶⁾ Section 5 has been amended by the British Nationality Act 1981 (c. 61); the Immigration Act 1988 (c. 14); and the Asylum and Immigration Act 1996 (c. 49).

⁽⁷⁾ S.I.1994/1895, amended by S.I. 1997/2981.

⁽⁸⁾ S.I. 2000/265.

(b) on whom the Secretary of State has since served a notice of his decision to make a deportation order.

(4) In the case of an appeal in respect of which section 2(1)(b) of the 1997 Act (appeals against variation of limited leave or refusal to vary it) continues to have effect in accordance with paragraph (2), section 7A(7) of the 1997 Act (pending appeals)⁽⁹⁾ applies as if the reference to section 62(3) of the 1999 Act were a reference to section 14(3) of the 1971 Act.

(5) In the case of an appeal in respect of which section 2(1) of the 1997 Act continues to have effect in accordance with paragraph (2) or (3), Schedule 2 of the 1997 Act (supplementary provisions as to appeals) has effect without the amendments made by the 1999 Act⁽¹⁰⁾.

⁽⁹⁾ Section 7A was inserted by paragraph 124 of Schedule 14 to the 1999 Act.

⁽¹⁰⁾ See paragraphs 126 and 127 of Schedule 14 to the 1999 Act.