

SCHEDULE 2

Regulation 30

EFFECT ON OTHER LEGISLATION

Leave under the 1971 Act

1.—(1) In accordance with section 7 of the Immigration Act 1988⁽¹⁾, a person who is admitted to or acquires a right to reside in the United Kingdom under these Regulations shall not require leave to remain in the United Kingdom under the 1971 Act during any period in which he has a right to reside under these Regulations but such a person shall require leave to remain under the 1971 Act during any period in which he does not have such a right.

(2) Where a person has leave to enter or remain under the 1971 Act which is subject to conditions and that person also has a right to reside under these Regulations, those conditions shall not have effect for as long as the person has that right to reside.

Persons not subject to restriction on the period for which they may remain

2.—(1) For the purposes of the 1971 Act and the British Nationality Act 1981⁽²⁾, a person who has a permanent right of residence under regulation 15 shall be regarded as a person who is in the United Kingdom without being subject under the immigration laws to any restriction on the period for which he may remain.

(2) But a qualified person, the family member of a qualified person and a family member who has retained the right of residence shall not, by virtue of that status, be so regarded for those purposes.

Carriers' liability under the 1999 Act

3. For the purposes of satisfying a requirement to produce a visa under section 40(1)(b) of the 1999 Act⁽³⁾ (charges in respect of passenger without proper documents), “a visa of the required kind” includes an EEA family permit, a residence card or a permanent residence card required for admission under regulation 11(2).

Appeals under the 2002 Act and previous immigration Acts

4.—(1) The following EEA decisions shall not be treated as immigration decisions for the purpose of section 82(2) of the 2002 Act (right of appeal against an immigration decision)—

- (a) a decision that a person is to be removed under regulation 19(3)(a) by way of a direction under section 10(1)(a) of the 1999 Act (as provided for by regulation 24(2));
- (b) a decision to remove a person under regulation 19(3)(b) by making a deportation order under section 5(1) of the 1971 Act (as provided for by regulation 24(3));
- (c) a decision to remove a person mentioned in regulation 24(4) by way of directions under paragraphs 8 to 10 of Schedule 2 to the 1971 Act.

(2) A person who has been issued with a registration certificate, residence card, a document certifying permanent residence or a permanent residence card under these Regulations or a registration certificate under the Accession (Immigration and Worker Registration) Regulations 2004⁽⁴⁾, or a person whose passport has been stamped with a family member residence stamp, shall have no right of appeal under section 2 of the Special Immigration Appeals Commission Act 1997 or section 82(1) of the 2002 Act. Any existing appeal under those sections of those Acts or under

(1) 1988 c. 14.

(2) 1981 c. 61.

(3) Section 40 was substituted by paragraph 13 of Schedule 8 to the 2002 Act.

(4) S.I. 2004/1219, amended by S.I. 2004/1236 and S.I. 2005/2400.

Status: This is the original version (as it was originally made).

the Asylum and Immigration Appeals Act 1993⁽⁵⁾, the Asylum and Immigration Act 1996⁽⁶⁾ or the 1999 Act shall be treated as abandoned.

(3) Subject to paragraph (4), a person may appeal to the Asylum and Immigration Tribunal under section 83(2) of the 2002 Act against the rejection of his asylum claim where—

(a) that claim has been rejected, but

(b) he has a right to reside in the United Kingdom under these Regulations.

(4) Paragraph (3) shall not apply if the person is an EEA national and the Secretary of State certifies that the asylum claim is clearly unfounded.

(5) The Secretary of State shall certify the claim under paragraph (4) unless satisfied that it is not clearly unfounded.

(6) In addition to the national of a State which is a contracting party to the Agreement referred to in section 84(2) of the 2002 Act, a Swiss national shall also be treated as an EEA national for the purposes of section 84(1)(d) of that Act.

(7) An appeal under these Regulations against an EEA decision (including an appeal made on or after 1st April 2003 which is treated as an appeal under these Regulations under Schedule 4 but not an appeal made before that date) shall be treated as an appeal under section 82(1) of the 2002 Act against an immigration decision for the purposes of section 96(1)(a) of the 2002 Act.

(8) Section 120 of the 2002 Act shall apply to a person if an EEA decision has been taken or may be taken in respect of him and, accordingly, the Secretary of State or an immigration officer may by notice require a statement from that person under subsection (2) of that section and that notice shall have effect for the purpose of section 96(2) of the 2002 Act.

(9) In sub-paragraph (1), “family member residence stamp” means a stamp in the passport of a family member of an EEA national confirming that he is the family member of an accession State worker requiring registration with a right of residence under these Regulations as the family member of that worker; and in this sub-paragraph “accession State worker requiring registration” has the same meaning as in regulation 2 of the Accession (Immigration and Worker Registration) Regulations 2004.

(5) 1993 c. 23.

(6) 1996 c. 49.