

SCHEDULE

Regulation 3

Amendments to the 2006 Regulations

Regulation 2 (general interpretation)

1. In regulation 2, in paragraph (1)—
 - (a) in the definition of “EEA decision”, after sub-paragraph (d), insert—

“;

but does not include decisions under regulations 24AA (human rights considerations and interim orders to suspend removal) or 29AA (temporary admission in order to submit case in person)”;
 - (b) in ““a qualifying EEA State residence card””, at the beginning, omit “a”.

Regulation 11 (right of admission to the United Kingdom)

2. In regulation 11, in paragraph (8), after “regulations 19(1)” insert “, (1A)”.

Regulation 15B (continuation of a right of residence)

3. In regulation 15B—
 - (a) in paragraphs (2)(b), (3)(b) and (4)(b), on each occasion when it occurs, omit “(within the meaning of section 104 of the 2002 Act)”;
 - (b) after paragraph (5), insert—

“(6) This regulation does not affect the ability of the Secretary of State to give directions for P’s removal while an appeal is pending or before it is finally determined.

(7) In this regulation, “pending” and “finally determined” have the meanings given in section 104 of the 2002 Act(1).”.

Regulation 19 (exclusion and removal from the United Kingdom)

4. In regulation 19, in paragraph (1A), at the end, insert “, except where the person is temporarily admitted pursuant to regulation 29AA”.

Regulation 22 (person claiming right of admission)

5. In regulation 22—
 - (a) in paragraph (1)(a), on the second occasion when it occurs, omit “or”;
 - (b) in paragraph (1)(b), at the end, insert “; or”;
 - (c) after paragraph (1)(b), insert—

“;

(c) a person to whom regulation 29AA applies”.

New regulation 24AA (human rights considerations and interim orders to suspend removal)

6. After regulation 24, insert—

(1) Section 104 was amended by section 26(7) of, and paragraph 20 of Schedule 2 to, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 9 of the Immigration, Asylum and Nationality Act 2006 (c. 13) and article 5(1) of, and paragraph 26 of Schedule 1 to, S.I. 2010/21.

“Human rights considerations and interim orders to suspend removal

24AA.—(1) This regulation applies where the Secretary of State intends to give directions for the removal of a person (“P”) to whom regulation 24(3) applies, in circumstances where—

- (a) P has not appealed against the EEA decision to which regulation 24(3) applies, but would be entitled, and remains within time, to do so from within the United Kingdom (ignoring any possibility of an appeal out of time with permission); or
- (b) P has so appealed but the appeal has not been finally determined.

(2) The Secretary of State may only give directions for P’s removal if the Secretary of State certifies that, despite the appeals process not having been begun or not having been finally determined, removal of P to the country or territory to which P is proposed to be removed, pending the outcome of P’s appeal, would not be unlawful under section 6 of the Human Rights Act 1998⁽²⁾ (public authority not to act contrary to Human Rights Convention).

(3) The grounds upon which the Secretary of State may certify a removal under paragraph (2) include (in particular) that P would not, before the appeal is finally determined, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed.

(4) If P applies to the appropriate court or tribunal (whether by means of judicial review or otherwise) for an interim order to suspend enforcement of the removal decision, P may not be removed from the United Kingdom until such time as the decision on the interim order has been taken, except—

- (a) where the expulsion decision is based on a previous judicial decision;
- (b) where P has had previous access to judicial review; or
- (c) where the removal decision is based on imperative grounds of public security.

(5) In this regulation, “finally determined” has the same meaning as in Part 6.”.

Regulation 29 (effect of appeals to the First Tier Tribunal or Upper Tribunal)

7. In regulation 29—

- (a) in paragraph (2), after “United Kingdom”, on the second occasion when it occurs, insert “(other than a decision under regulation 19(1), (1A) or (1B))”;
- (b) in paragraph (3), after “United Kingdom”, on the second occasion when it occurs, insert “(other than a decision under regulation 19(3)(b))”;
- (c) after paragraph (4), insert—

“(4A) In paragraph (4), the words “except that he” to the end do not apply to an EEA decision to which regulation 24AA applies.”; and
- (d) in paragraph (5), at the end, insert “(except in cases where the EEA decision was taken pursuant to regulation 19(1), (1A), (1B) or (3)(b))”.

New regulation 29AA (temporary admission in order to submit case in person)

8. After regulation 29, insert—

(2) 1998 c. 42; section 6 was amended by section 146 of, and Part 5 of Schedule 18 to, the Constitutional Reform Act 2005 (c. 4).

“Temporary admission in order to submit case in person

29AA.—(1) This regulation applies where—

- (a) a person (“P”) was removed from the United Kingdom pursuant to regulation 19(3)(b);
- (b) P has appealed against the decision referred to in sub-paragraph (a);
- (c) a date for P’s appeal has been set by the First Tier Tribunal or Upper Tribunal; and
- (d) P wants to make submissions before the First Tier Tribunal or Upper Tribunal in person.

(2) P may apply to the Secretary of State for permission to be temporarily admitted (within the meaning of paragraphs 21 to 24 of Schedule 2 to the 1971 Act⁽³⁾, as applied by this regulation) to the United Kingdom in order to make submissions in person.

(3) The Secretary of State must grant P permission, except when P’s appearance may cause serious troubles to public policy or public security.

(4) When determining when P is entitled to be given permission, and the duration of P’s temporary admission should permission be granted, the Secretary of State must have regard to the dates upon which P will be required to make submissions in person.

(5) Where—

- (a) P is temporarily admitted to the United Kingdom pursuant to this regulation;
- (b) a hearing of P’s appeal has taken place; and
- (c) the appeal is not finally determined,

P may be removed from the United Kingdom pending the remaining stages of the redress procedure (but P may apply to return to the United Kingdom to make submissions in person during the remaining stages of the redress procedure in accordance with this regulation).

(6) Where the Secretary of State grants P permission to be temporarily admitted to the United Kingdom under this regulation, upon such admission P is to be treated as if P were a person refused leave to enter under the 1971 Act for the purposes of paragraphs 8, 10, 10A, 11, 16 to 18 and 21 to 24 of Schedule 2⁽⁴⁾ to the 1971 Act.

(7) Where Schedule 2 to the 1971 Act so applies, it has effect as if—

- (a) the reference in paragraph 8(1) to leave to enter were a reference to admission to the United Kingdom under these Regulations; and
- (b) the reference in paragraph 16(1) to detention pending a decision regarding leave to enter or remain in the United Kingdom were to detention pending submission of P’s case in person in accordance with this regulation.

(8) P will be deemed not to have been admitted to the United Kingdom during any time during which P is temporarily admitted pursuant to this regulation.”.

(3) The relevant parts of paragraphs 21 to 24 of Schedule 2 to the Immigration Act 1971 (c. 77) were amended by section 64(2) of, and Schedule 6 to, the Criminal Justice Act 1972 (c. 71), section 10 of, and paragraph 10(2) of the Schedule to, the Immigration Act 1988 (c. 14), section 12(1) of, and paragraphs 10 and 11 of Schedule 2 to, the Asylum and Immigration Act 1996 (c. 49), section 90(1) of, and paragraph 70 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 169(1) and (3) of, paragraphs 62 and 63 of Schedule 14 and Schedule 16 to, the Immigration and Asylum Act 1999 (c. 33), section 109(1) of, and paragraph 149 of Schedule 8 to, the Courts Act 2003 (c. 39), section 26(7) of, and paragraph 1(3) of Schedule 2 to, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 42(4) of the Immigration, Asylum and Nationality Act 2006 (c. 13), and article 5(1) of, and paragraph 2 of Schedule 1 to, S.I. 2010/21.

(4) Paragraph 10A of Schedule 2 to the Immigration Act 1971 was inserted by section 73(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41). The relevant parts of paragraphs 10 and 16 to 18 of Schedule 2 to the Immigration Act 1971 were amended by section 10 of, and paragraph 9(2) of the Schedule to, the Immigration Act 1988, section 12(3) of, and Schedule 4 to, the Asylum and Immigration Act 1996, sections 140 and 169(1) of, and paragraphs 60 and 61 of Schedule 14 to, the Immigration and Asylum Act 1999, and sections 63, 64 and 73(5) of the Nationality, Immigration and Asylum Act 2002 (c. 41).

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

Schedule 2 (effect on other legislation)

9. In Schedule 2, in paragraph 3 (carriers' liability under Part II of the Immigration and Asylum Act 1999⁽⁵⁾), after "a qualifying EEA State residence card", insert " , permission to be temporarily admitted under regulation 29AA".

⁽⁵⁾ [1999 c.33](#); section 40 was substituted by section 125 of, and paragraph 13 of Schedule 8 to, the Nationality, Immigration and Asylum Act 2002.