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STATUTORY INSTRUMENTS

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**2016 No. 1052**

**The Immigration (European Economic Area) Regulations 2016**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Immigration (European Economic Area) Regulations 2016.

(2) These Regulations come into force—

- (a) for the purposes of this regulation, regulation 44 and Schedule 5 (transitory provisions), on 25th November 2016;
- (b) for all other purposes, on 1st February 2017.

**General interpretation**

2.—(1) In these Regulations—

“the 1971 Act” means the Immigration Act 1971(1);

“the 1999 Act” means the Immigration and Asylum Act 1999(2);

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

“the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006(3);

“civil partner” does not include—

- (a) a party to a civil partnership of convenience; or
- (b) the civil partner (“C”) of a person (“P”) where a spouse, civil partner or durable partner of C or P is already present in the United Kingdom;

“civil partnership of convenience” includes a civil partnership entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent—

- (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or
- (b) any other criteria that the party to the civil partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

“Common Travel Area” has the meaning given in section 1(3) of the 1971 Act;

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(1) 1971 c. 77.

(2) 1999 c. 33.

(3) S.I. 2006/1003 as amended by the Immigration Act 2014 (c. 22), Schedule 1, paragraph 2(5), and S.I. 2006/3317, 2009/1117, 2010/21, 708, 1593, 2011/544, 1247, 2012/1547, 1809, 2560, 2013/1391, 1460, 3032, 2014/1451, 1976, 2761, and 2015/694.

“decision maker” means the Secretary of State, an immigration officer or an entry clearance officer (as the case may be);

“deportation order” means an order made under regulation 32(3);

“derivative residence card” means a card issued to a person under regulation 20;

“derivative right to reside” means a right to reside under regulation 16;

“document certifying permanent residence” means a document issued under regulation 19(1);

“durable partner” does not include—

- (a) a party to a durable partnership of convenience; or
- (b) the durable partner (“D”) of a person (“P”) where a spouse, civil partner or durable partner of D or P is already present in the United Kingdom and where that marriage, civil partnership or durable partnership is subsisting;

“durable partnership of convenience” includes a durable partnership entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent—

- (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or
- (b) any other criteria that the party to the durable partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

“EEA decision” means a decision under these Regulations that concerns—

- (a) a person’s entitlement to be admitted to the United Kingdom;
- (b) a person’s entitlement to be issued with or have renewed, or not to have revoked, a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card (but does not include a decision that an application for the above documentation is invalid);
- (c) a person’s removal from the United Kingdom; or
- (d) the cancellation, under regulation 25, of a person’s right to reside in the United Kingdom,

but does not include a decision to refuse to issue a document under regulation 12(4) (issue of an EEA family permit to an extended family member), 17(5) (issue of a registration certificate to an extended family member) or 18(4) (issue of a residence card to an extended family member), a decision to reject an application under regulation 26(4) (misuse of a right to reside: material change of circumstances), or any decisions under regulation 33 (human rights considerations and interim orders to suspend removal) or 41 (temporary admission to submit case in person);

“EEA family permit” means a document issued under regulation 12;

“EEA national” means a national of an EEA State who is not also a British citizen;

“EEA State” means—

- (a) a member State, other than the United Kingdom; or
- (b) Liechtenstein, Iceland, Norway or Switzerland;

“entry clearance” has the meaning given in section 33(1) of the 1971 Act<sup>(4)</sup>;

“entry clearance officer” means a person responsible for the grant or refusal of entry clearance;

“exclusion order” means an order made under regulation 23(5);

“indefinite leave”, “immigration laws” and “immigration rules” have the meanings given in section 33(1) of the 1971 Act;

(4) The relevant part of section 33(1) was amended by the British Nationality Act 1981(c. 61), Schedule 4, paragraph 2, and the Immigration Act 1988 (c. 14), the Schedule, paragraph 5.

“marriage of convenience” includes a marriage entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent—

- (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or
- (b) any other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

“military service” means service in the armed forces of an EEA State;

“permanent residence card” means a document issued under regulation 19(2);

“qualifying EEA State residence card” means a valid document called a “Residence card of a family member of a Union Citizen” issued under Article 10 of Council [Directive 2004/38/EC](#)(<sup>5</sup>) (as applied, where relevant, by the EEA agreement) by any EEA State (except Switzerland) to a non-EEA family member of an EEA national as proof of the holder’s right of residence in that State;

“registration certificate” means a certificate issued under regulation 17;

“relevant EEA national” in relation to an extended family member has the meaning given in regulation 8(6);

“residence card” means a card issued under regulation 18;

“right to reside” means a right to reside in the United Kingdom under these Regulations (or where so specified, a right to reside under a particular regulation);

“spouse” does not include—

- (a) a party to a marriage of convenience; or
- (b) the spouse (“S”) of a person (“P”) where a spouse, civil partner or durable partner of S or P is already present in the United Kingdom.

(2) Section 11 of the 1971 Act (construction of references to entry)(<sup>6</sup>) applies for the purpose of determining whether a person has entered the United Kingdom for the purpose of these Regulations as it applies for the purpose of determining whether a person has entered the United Kingdom for the purpose of that Act.

### **Continuity of residence**

**3.—**(1) This regulation applies for the purpose of calculating periods of continuous residence in the United Kingdom under these Regulations.

(2) Continuity of residence is not affected by—

- (a) periods of absence from the United Kingdom which do not exceed six months in total in any year;
- (b) periods of absence from the United Kingdom on compulsory military service; or
- (c) one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

(3) Continuity of residence is broken when—

- (a) a person serves a sentence of imprisonment;
- (b) a deportation or exclusion order is made in relation to a person; or
- (c) a person is removed from the United Kingdom under these Regulations.

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(5) OJ No L 158, 30.4.04, p98.

(6) Section 11 was amended by the 2002 Act, section 62(8), and S.I [1993/1813](#) and [2003/1016](#).

(4) Paragraph (3)(a) applies, in principle, to an EEA national who has resided in the United Kingdom for at least ten years, but it does not apply where the Secretary of State considers that—

- (a) prior to serving a sentence of imprisonment, the EEA national had forged integrating links with the United Kingdom;
- (b) the effect of the sentence of imprisonment was not such as to break those integrating links; and
- (c) taking into account an overall assessment of the EEA national’s situation, it would not be appropriate to apply paragraph (3)(a) to the assessment of that EEA national’s continuity of residence.

**“Worker”, “self-employed person”, “self-sufficient person” and “student”**

4.—(1) In these Regulations—

- (a) “worker” means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union(7);
- (b) “self-employed person” means a person who is established in the United Kingdom in order to pursue activity as a self-employed person in accordance with Article 49 of the Treaty on the Functioning of the European Union(8);
- (c) “self-sufficient person” means a person who has—
  - (i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person’s period of residence; and
  - (ii) comprehensive sickness insurance cover in the United Kingdom;
- (d) “student” means a person who—
  - (i) is enrolled, for the principal purpose of following a course of study (including vocational training), at a public or private establishment which is—
    - (aa) financed from public funds; or
    - (bb) otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or training within the law or administrative practice of the part of the United Kingdom in which the establishment is located;
  - (ii) has comprehensive sickness insurance cover in the United Kingdom; and
  - (iii) has assured the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that the person has sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person’s intended period of residence.

(2) For the purposes of paragraphs (3) and (4) below, “relevant family member” means a family member of a self-sufficient person or student who is residing in the United Kingdom and whose right to reside is dependent upon being the family member of that student or self-sufficient person.

(3) In sub-paragraphs (1)(c) and (d)—

- (a) the requirement for the self-sufficient person or student to have sufficient resources not to become a burden on the social assistance system of the United Kingdom during the intended period of residence is only satisfied if the resources available to the student or self-sufficient person and any of their relevant family members are sufficient to avoid the self-sufficient person or student and all their relevant family members from becoming such a burden; and

(7) OJ No C326, 26.10.12, p65.

(8) OJ No C326, 26.10.12, p67.

- (b) the requirement for the student or self-sufficient person to have comprehensive sickness insurance cover in the United Kingdom is only satisfied if such cover extends to cover both the student or self-sufficient person and all their relevant family members.
- (4) In paragraph (1)(c) and (d) and paragraph (3), the resources of the student or self-sufficient person and, where applicable, any of their relevant family members, are to be regarded as sufficient if—
  - (a) they exceed the maximum level of resources which a British citizen (including the resources of the British citizen’s family members) may possess if the British citizen is to become eligible for social assistance under the United Kingdom benefit system; or
  - (b) paragraph (a) does not apply but, taking into account the personal circumstances of the person concerned and, where applicable, all their relevant family members, it appears to the decision maker that the resources of the person or persons concerned should be regarded as sufficient.
- (5) For the purposes of regulation 16(2) (criteria for having a derivative right to reside), references in this regulation to “family members” includes a “primary carer” as defined in regulation 16(8).

**“Worker or self-employed person who has ceased activity”**

5.—(1) In these Regulations, “worker or self-employed person who has ceased activity” means an EEA national who satisfies a condition in paragraph (2), (3), (4) or (5).

- (2) The condition in this paragraph is that the person—
  - (a) terminates activity as a worker or self-employed person and—
    - (i) had reached the age of entitlement to a state pension on terminating that activity; or
    - (ii) in the case of a worker, ceases working to take early retirement;
  - (b) pursued activity as a worker or self-employed person in the United Kingdom for at least 12 months prior to the termination; and
  - (c) resided in the United Kingdom continuously for more than three years prior to the termination.
- (3) The condition in this paragraph is that the person terminates activity in the United Kingdom as a worker or self-employed person as a result of permanent incapacity to work; and—
  - (a) had resided in the United Kingdom continuously for more than two years prior to the termination; or
  - (b) the incapacity is the result of an accident at work or an occupational disease that entitles the person to a pension payable in full or in part by an institution in the United Kingdom.
- (4) The condition in this paragraph is that the person—
  - (a) is active as a worker or self-employed person in an EEA State but retains a place of residence in the United Kingdom and returns, as a rule, to that place at least once a week; and
  - (b) prior to becoming so active in the EEA State, had been continuously resident and continuously active as a worker or self-employed person in the United Kingdom for at least three years.
- (5) A person who satisfied the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) must, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the United Kingdom during any period during which that person is working or self-employed in the EEA State.

(6) The conditions in paragraphs (2) and (3) as to length of residence and activity as a worker or self-employed person do not apply in relation to a person whose spouse or civil partner is a British citizen.

(7) Subject to regulation 6(2), periods of—

- (a) inactivity for reasons not of the person's own making;
- (b) inactivity due to illness or accident; and
- (c) in the case of a worker, involuntary unemployment duly recorded by the relevant employment office,

must be treated as periods of activity as a worker or self-employed person, as the case may be.

### **“Qualified person”**

6.—(1) In these Regulations—

“jobseeker” means an EEA national who satisfies conditions A, B and, where relevant, C;

“qualified person” means a person who is an EEA national and in the United Kingdom as—

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student;

“relevant period” means—

- (a) in the case of a person retaining worker status under paragraph (2)(b), a continuous period of six months;
- (b) in the case of a jobseeker, 91 days, minus the cumulative total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.

(2) A person who is no longer working must continue to be treated as a worker provided that the person—

- (a) is temporarily unable to work as the result of an illness or accident;
- (b) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided the person—
  - (i) has registered as a jobseeker with the relevant employment office; and
  - (ii) satisfies conditions A and B;
- (c) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided the person—
  - (i) has registered as a jobseeker with the relevant employment office; and
  - (ii) satisfies conditions A and B;
- (d) is involuntarily unemployed and has embarked on vocational training; or
- (e) has voluntarily ceased working and has embarked on vocational training that is related to the person's previous employment.

(3) A person to whom paragraph (2)(c) applies may only retain worker status for a maximum of six months.

(4) A person who is no longer in self-employment continues to be treated as a self-employed person if that person is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident.

(5) Condition A is that the person—

- (a) entered the United Kingdom in order to seek employment; or
- (b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside under sub-paragraphs (b) to (e) of the definition of qualified person in paragraph (1) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (c)).

(6) Condition B is that the person provides evidence of seeking employment and having a genuine chance of being engaged.

(7) A person may not retain the status of—

- (a) a worker under paragraph (2)(b); or
- (b) a jobseeker;

for longer than the relevant period without providing compelling evidence of continuing to seek employment and having a genuine chance of being engaged.

(8) Condition C applies where the person concerned has, previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B—

- (a) in the case of a person to whom paragraph (2)(b) or (c) applied, for at least six months; or
- (b) in the case of a jobseeker, for at least 91 days in total,

unless the person concerned has, since enjoying the above right to reside, been continuously absent from the United Kingdom for at least 12 months.

(9) Condition C is that the person has had a period of absence from the United Kingdom.

(10) Where condition C applies—

- (a) paragraph (7) does not apply; and
- (b) condition B has effect as if “compelling” were inserted before “evidence”.

### **“Family member”**

7.—(1) In these Regulations, “family member” means, in relation to a person (“A”)—

- (a) A’s spouse or civil partner;
- (b) A’s direct descendants, or the direct descendants of A’s spouse or civil partner who are either—
  - (i) aged under 21; or
  - (ii) dependants of A, or of A’s spouse or civil partner;
- (c) dependent direct relatives in A’s ascending line, or in that of A’s spouse or civil partner.

(2) Where A is a student residing in the United Kingdom otherwise than under regulation 13 (initial right of residence), a person is not a family member of A under paragraph (1)(b) or (c) unless—

- (a) in the case of paragraph (1)(b), the person is the dependent child of A or of A’s spouse or civil partner; or
- (b) A also falls within one of the other categories of qualified person mentioned in regulation 6(1).

(3) A person (“B”) who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card must be treated as a family member of A, provided—

- (a) B continues to satisfy the conditions in regulation 8(2), (3), (4) or (5); and
  - (b) the EEA family permit, registration certificate or residence card remains in force.
- (4) A must be an EEA national unless regulation 9 applies (family members of British citizens).

### “Extended family member”

8.—(1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person is—

- (a) a relative of an EEA national; and
- (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national’s household; and either—
  - (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
  - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national’s household.

(3) The condition in this paragraph is that the person is a relative of an EEA national and on serious health grounds, strictly requires the personal care of the EEA national.

(4) The condition in this paragraph is that the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national.

(5) The condition in this paragraph is that the person is the partner (other than a civil partner) of, and in a durable relationship with, an EEA national, and is able to prove this to the decision maker.

(6) In these Regulations, “relevant EEA national” means, in relation to an extended family member—

- (a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related;
- (b) referred to in paragraph (5), the EEA national who is the durable partner of the extended family member.

(7) In paragraphs (2) and (3), “relative of an EEA national” includes a relative of the spouse or civil partner of an EEA national where on the basis of being an extended family member a person—

- (a) has prior to the 1st February 2017 been issued with—
  - (i) an EEA family permit;
  - (ii) a registration certificate; or
  - (iii) a residence card; and
- (b) has since the most recent issue of a document satisfying sub-paragraph (a) been continuously resident in the United Kingdom.

### Family members of British citizens

9.—(1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member (“F”) of a British citizen (“BC”) as though the BC were an EEA national.



- (2) The conditions are that—
  - (a) BC—
    - (i) is residing in an EEA State as a worker, self-employed person, self-sufficient person or a student, or so resided immediately before returning to the United Kingdom; or
    - (ii) has acquired the right of permanent residence in an EEA State;
  - (b) F and BC resided together in the EEA State; and
  - (c) F and BC’s residence in the EEA State was genuine.
- (3) Factors relevant to whether residence in the EEA State is or was genuine include—
  - (a) whether the centre of BC’s life transferred to the EEA State;
  - (b) the length of F and BC’s joint residence in the EEA State;
  - (c) the nature and quality of the F and BC’s accommodation in the EEA State, and whether it is or was BC’s principal residence;
  - (d) the degree of F and BC’s integration in the EEA State;
  - (e) whether F’s first lawful residence in the EU with BC was in the EEA State.
- (4) This regulation does not apply—
  - (a) where the purpose of the residence in the EEA State was as a means for circumventing any immigration laws applying to non-EEA nationals to which F would otherwise be subject (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or
  - (b) to a person who is only eligible to be treated as a family member as a result of regulation 7(3) (extended family members treated as family members).
- (5) Where these Regulations apply to F, BC is to be treated as holding a valid passport issued by an EEA State for the purposes of the application of these Regulations to F.
- (6) In paragraph (2)(a)(ii), BC is only to be treated as having acquired the right of permanent residence in the EEA State if such residence would have led to the acquisition of that right under regulation 15, had it taken place in the United Kingdom.
- (7) For the purposes of determining whether, when treating the BC as an EEA national under these Regulations in accordance with paragraph (1), BC would be a qualified person—
  - (a) any requirement to have comprehensive sickness insurance cover in the United Kingdom still applies, save that it does not require the cover to extend to BC;
  - (b) in assessing whether BC can continue to be treated as a worker under regulation 6(2)(b) or (c), BC is not required to satisfy condition A;
  - (c) in assessing whether BC can be treated as a jobseeker as defined in regulation 6(1), BC is not required to satisfy conditions A and, where it would otherwise be relevant, condition C.

**“Family member who has retained the right of residence”**

**10.**—(1) In these Regulations, “family member who has retained the right of residence” means, subject to paragraphs (8) and (9), a person who satisfies a condition in paragraph (2), (3), (4) or (5).

- (2) The condition in this paragraph is that the person—
  - (a) was a family member of a qualified person or of an EEA national with a right of permanent residence when the qualified person or the EEA national with the right of permanent residence died;

- (b) resided in the United Kingdom in accordance with these Regulations for at least the year immediately before the death of the qualified person or the EEA national with a right of permanent residence; and
  - (c) satisfies the condition in paragraph (6).
- (3) The condition in this paragraph is that the person—
- (a) is the direct descendant of—
    - (i) a qualified person or an EEA national with a right of permanent residence who has died;
    - (ii) a person who ceased to be a qualified person on ceasing to reside in the United Kingdom;
    - (iii) the spouse or civil partner of the qualified person or EEA national described in sub-paragraph (i) immediately preceding that qualified person or EEA national's death; or
    - (iv) the spouse or civil partner of the person described in sub-paragraph (ii); and
  - (b) was attending an educational course in the United Kingdom immediately before the qualified person or the EEA national with a right of permanent residence died, or ceased to be a qualified person, and continues to attend such a course.
- (4) The condition in this paragraph is that the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).
- (5) The condition in this paragraph is that the person (“A”)—
- (a) ceased to be a family member of a qualified person or an EEA national with a right of permanent residence on the termination of the marriage or civil partnership of A;
  - (b) was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
  - (c) satisfies the condition in paragraph (6); and
  - (d) either—
    - (i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership, the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;
    - (ii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has custody of a child of that qualified person or EEA national;
    - (iii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has the right of access to a child of that qualified person or EEA national, where the child is under the age of 18 and where a court has ordered that such access must take place in the United Kingdom; or
    - (iv) the continued right of residence in the United Kingdom of A is warranted by particularly difficult circumstances, such as where A or another family member has been a victim of domestic violence whilst the marriage or civil partnership was subsisting.
- (6) The condition in this paragraph is that the person—
- (a) is not an EEA national but would, if the person were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or
  - (b) is the family member of a person who falls within paragraph (a).

(7) In this regulation, “educational course” means a course within the scope of Article 10 of Council Regulation (EU) No. 492/2011(9).

(8) A person (“P”) does not satisfy a condition in paragraph (2), (3), (4) or (5) if, at the first time P would otherwise have satisfied the relevant condition, P had a right of permanent residence under regulation 15.

(9) A family member who has retained the right of residence ceases to enjoy that status on acquiring a right of permanent residence under regulation 15.

## PART 2

### EEA RIGHTS

#### **Right of admission to the United Kingdom**

**11.**—(1) An EEA national must be admitted to the United Kingdom on arrival if the EEA national produces a valid national identity card or passport issued by an EEA State.

(2) A person who is not an EEA national must be admitted to the United Kingdom if that person is—

- (a) a family member of an EEA national and produces on arrival a valid passport and qualifying EEA State residence card, provided the conditions in regulation 23(4) (family member of EEA national must accompany or join EEA national with right to reside) are met; or
- (b) a family member of an EEA national, a family member who has retained the right of residence, a person who meets the criteria in paragraph (5) or a person with a right of permanent residence under regulation 15 and produces on arrival—
  - (i) a valid passport; and
  - (ii) a valid EEA family permit, residence card, derivative residence card or permanent residence card.

(3) An immigration officer must not place a stamp in the passport of a person admitted to the United Kingdom under this regulation who is not an EEA national if the person produces a residence card, a derivative residence card, a permanent residence card or a qualifying EEA State residence card.

(4) Before an immigration officer refuses admission to the United Kingdom to a person under this regulation because the person does not produce on arrival a document mentioned in paragraph (1) or (2), the immigration officer must provide every reasonable opportunity for the document to be obtained by, or brought to, the person or allow the person to prove by other means that the person is—

- (a) an EEA national;
  - (b) a family member of an EEA national with a right to accompany that EEA national or join that EEA national in the United Kingdom;
  - (c) a person who meets the criteria in paragraph (5); or
  - (d) a family member who has retained the right of residence or a person with a right of permanent residence under regulation 15.
- (5) The criteria in this paragraph are that a person (“P”)—
- (a) previously resided in the United Kingdom under regulation 16(3) and would be entitled to reside in the United Kingdom under that regulation were P in the country;

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(9) OJ No L 141, 27.5.2011, p3.

- (b) is accompanying an EEA national to, or joining an EEA national in, the United Kingdom and P would be entitled to reside in the United Kingdom under regulation 16(2) were P and the EEA national both in the United Kingdom;
  - (c) is accompanying a person (“the relevant person”) to, or joining the relevant person in, the United Kingdom and—
    - (i) the relevant person is residing, or has resided, in the United Kingdom under regulation 16(3); and
    - (ii) P would be entitled to reside in the United Kingdom under regulation 16(4) were P and the relevant person both in the United Kingdom;
  - (d) is accompanying a person who meets the criteria in sub-paragraph (b) or (c) (“the relevant person”) to the United Kingdom and—
    - (i) P and the relevant person are both—
      - (aa) seeking admission to the United Kingdom in reliance on this paragraph for the first time; or
      - (bb) returning to the United Kingdom having previously resided there pursuant to the same provisions of regulation 16 in reliance on which they now base their claim to admission; and
    - (ii) P would be entitled to reside in the United Kingdom under regulation 16(6) were P and the relevant person there; or
  - (e) is accompanying a British citizen to, or joining a British citizen in, the United Kingdom and P would be entitled to reside in the United Kingdom under regulation 16(5) were P and the British citizen both in the United Kingdom.
- (6) Paragraph (7) applies where—
- (a) a person (“P”) seeks admission to the United Kingdom in reliance on paragraph (5)(b), (c) or (e); and
  - (b) if P were in the United Kingdom, P would have a derived right to reside under regulation 16(8)(b)(ii).
- (7) Where this paragraph applies a person (“P”) must only be regarded as meeting the criteria in paragraph (5)(b), (c) or (e) where P—
- (a) is accompanying the person with whom P would on admission to the United Kingdom jointly share care responsibility for the purpose of regulation 16(8)(b)(ii); or
  - (b) has previously resided in the United Kingdom pursuant to regulation 16(2), (4) or (5) as a joint primary carer and seeks admission to the United Kingdom in order to reside there again on the same basis.
- (8) But this regulation is subject to regulations 23(1), (2), (3) and (4) and 31.

### **Issue of EEA family permit**

**12.—(1)** An entry clearance officer must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and—

- (a) the EEA national—
  - (i) is residing in the United Kingdom in accordance with these Regulations; or
  - (ii) will be travelling to the United Kingdom within six months of the date of the application and will be an EEA national residing in the United Kingdom in accordance with these Regulations on arrival in the United Kingdom; and

- (b) the family member will be accompanying the EEA national to the United Kingdom or joining the EEA national there.
- (2) An entry clearance officer must issue an EEA family permit to a person who applies and provides evidence demonstrating that, at the time at which the person first intends to use the EEA family permit, the person—
  - (a) would be entitled to be admitted to the United Kingdom because that person would meet the criteria in regulation 11(5); and
  - (b) will (save in the case of a person who would be entitled to be admitted to the United Kingdom because that person would meet the criteria for admission in regulation 11(5)(a)) be accompanying to, or joining in, the United Kingdom any person from whom the right to be admitted to the United Kingdom under the criteria in regulation 11(5) is derived.
- (3) An entry clearance officer must issue an EEA family permit to—
  - (a) a family member who has retained the right of residence; or
  - (b) a person who is not an EEA national but who has acquired the right of permanent residence under regulation 15.
- (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
  - (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
  - (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
  - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.
- (5) Where an entry clearance officer receives an application under paragraph (4) an extensive examination of the personal circumstances of the applicant must be undertaken by the Secretary of State and if the application is refused, the entry clearance officer must give reasons justifying the refusal unless this is contrary to the interests of national security.
- (6) An EEA family permit issued under this regulation must be issued free of charge and as soon as possible.
- (7) But an EEA family permit must not be issued under this regulation if the applicant or the EEA national concerned is not entitled to be admitted to the United Kingdom as a result of regulation 23(1), (2) or (3) or falls to be excluded in accordance with regulation 23(5).
- (8) An EEA family permit must not be issued under this regulation to a person (“A”) who is the spouse, civil partner or durable partner of a person (“B”) where a spouse, civil partner or durable partner of A or B holds a valid EEA family permit.

### **Initial right of residence**

- 13.**—(1) An EEA national is entitled to reside in the United Kingdom for a period not exceeding three months beginning on the date of admission to the United Kingdom provided the EEA national holds a valid national identity card or passport issued by an EEA State.
- (2) A person who is not an EEA national but is a family member who has retained the right of residence or the family member of an EEA national residing in the United Kingdom under paragraph (1) is entitled to reside in the United Kingdom provided that person holds a valid passport.
- (3) An EEA national or the family member of an EEA national who is an unreasonable burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation.

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside under this regulation where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b) (decision to remove on grounds of public policy, public security or public health), 24(1) (refusal to issue residence documentation etc), 25(1) (cancellation of a right of residence), 26(3) (misuse of right to reside) or 31(1) (revocation of admission), unless that decision is set aside or otherwise no longer has effect.

### **Extended right of residence**

**14.**—(1) A qualified person is entitled to reside in the United Kingdom for as long as that person remains a qualified person.

(2) A person (“P”) who is a family member of a qualified person residing in the United Kingdom under paragraph (1) or of an EEA national with a right of permanent residence under regulation 15 is entitled to remain in the United Kingdom for so long as P remains the family member of that person or EEA national.

(3) A family member who has retained the right of residence is entitled to reside in the United Kingdom for so long as that person remains a family member who has retained the right of residence.

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside in the United Kingdom under this regulation where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

### **Right of permanent residence**

**15.**—(1) The following persons acquire the right to reside in the United Kingdom permanently—

- (a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;
- (b) a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;
- (c) a worker or self-employed person who has ceased activity;
- (d) the family member of a worker or self-employed person who has ceased activity, provided—
  - (i) the person was the family member of the worker or self-employed person at the point the worker or self-employed person ceased activity; and
  - (ii) at that point, the family member enjoyed a right to reside on the basis of being the family member of that worker or self-employed person;
- (e) a person who was the family member of a worker or self-employed person where—
  - (i) the worker or self-employed person has died;
  - (ii) the family member resided with the worker or self-employed person immediately before the death; and
  - (iii) the worker or self-employed person had resided continuously in the United Kingdom for at least two years immediately before dying or the death was the result of an accident at work or an occupational disease;
- (f) a person who—
  - (i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and
  - (ii) was, at the end of the period, a family member who has retained the right of residence.

(2) Residence in the United Kingdom as a result of a derivative right to reside does not constitute residence for the purpose of this regulation.

(3) The right of permanent residence under this regulation is lost through absence from the United Kingdom for a period exceeding two years.

(4) A person who satisfies the criteria in this regulation is not entitled to a right to permanent residence in the United Kingdom where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

### **Derivative right to reside**

**16.**—(1) A person has a derivative right to reside during any period in which the person—

- (a) is not an exempt person; and
- (b) satisfies each of the criteria in one or more of paragraphs (2) to (6).

(2) The criteria in this paragraph are that—

- (a) the person is the primary carer of an EEA national; and
- (b) the EEA national—
  - (i) is under the age of 18;
  - (ii) resides in the United Kingdom as a self-sufficient person; and
  - (iii) would be unable to remain in the United Kingdom if the person left the United Kingdom for an indefinite period.

(3) The criteria in this paragraph are that—

- (a) any of the person's parents ("PP") is an EEA national who resides or has resided in the United Kingdom;
- (b) both the person and PP reside or have resided in the United Kingdom at the same time, and during such a period of residence, PP has been a worker in the United Kingdom; and
- (c) the person is in education in the United Kingdom.

(4) The criteria in this paragraph are that—

- (a) the person is the primary carer of a person satisfying the criteria in paragraph (3) ("PPP"); and
- (b) PPP would be unable to continue to be educated in the United Kingdom if the person left the United Kingdom for an indefinite period.

(5) The criteria in this paragraph are that—

- (a) the person is the primary carer of a British citizen ("BC");
- (b) BC is residing in the United Kingdom; and
- (c) BC would be unable to reside in the United Kingdom or in another EEA State if the person left the United Kingdom for an indefinite period.

(6) The criteria in this paragraph are that—

- (a) the person is under the age of 18;
- (b) the person does not have leave to enter, or remain in, the United Kingdom under the 1971 Act;
- (c) the person's primary carer is entitled to a derivative right to reside in the United Kingdom under paragraph (2), (4) or (5); and

- (d) the primary carer would be prevented from residing in the United Kingdom if the person left the United Kingdom for an indefinite period.
- (7) In this regulation—
- (a) “education” excludes nursery education but does not exclude education received before the compulsory school age where that education is equivalent to the education received at or after the compulsory school age;
- (b) “worker” does not include a jobseeker or a person treated as a worker under regulation 6(2);
- (c) an “exempt person” is a person—
- (i) who has a right to reside under another provision of these Regulations;
- (ii) who has the right of abode under section 2 of the 1971 Act(10);
- (iii) to whom section 8 of the 1971 Act(11), or an order made under subsection (2) of that section(12), applies; or
- (iv) who has indefinite leave to enter or remain in the United Kingdom.
- (8) A person is the “primary carer” of another person (“AP”) if—
- (a) the person is a direct relative or a legal guardian of AP; and
- (b) either—
- (i) the person has primary responsibility for AP’s care; or
- (ii) shares equally the responsibility for AP’s care with one other person who is not an exempt person.
- (9) In paragraph (2)(b)(iii), (4)(b) or (5)(c), if the role of primary carer is shared with another person in accordance with paragraph (8)(b)(ii), the words “the person” are to be read as “both primary carers”.
- (10) Paragraph (9) does not apply if the person with whom care responsibility is shared acquired a derivative right to reside in the United Kingdom as a result of this regulation prior to the other person’s assumption of equal care responsibility.
- (11) A person is not be regarded as having responsibility for another person’s care for the purpose of paragraph (8) on the sole basis of a financial contribution towards that person’s care.
- (12) A person does not have a derivative right to reside where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

## PART 3

### RESIDENCE DOCUMENTATION

#### Issue of registration certificate

17.—(1) The Secretary of State must issue a registration certificate to a qualified person immediately on application and production of—

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(10) Section 2 was amended by the British Nationality Act 1981, section 39(2), and the Immigration Act 1988, section 3(3).

(11) Section 8 was amended by the British Nationality Act 1981, section 39(4) and Schedule 4, paragraphs 2 and 5, the Immigration Act 1988, section 4, the 1999 Act, section 6, the Statute Law (Repeals) Act 1995 (c. 44), Schedule 1, Part II and the Immigration Act 2016 (c. 19), section 76(1).

(12) S.I. 1972/1613 was made under section 8(2) of the 1971 Act and has been amended by S.I. 1972/1613, 1975/617, 1977/693, 1982/1649, 1985/1809, 1997/1402, 2207, 2004/3171 and 2015/1866.



- (a) a valid national identity card or passport issued by an EEA State; and
  - (b) proof that the applicant is a qualified person.
- (2) In the case of a worker, confirmation of the worker's engagement from the worker's employer or a certificate of employment is sufficient proof for the purposes of paragraph (1)(b).
- (3) The Secretary of State must issue a registration certificate to an EEA national who is the family member of a qualified person or of an EEA national with a right of permanent residence under regulation 15 immediately on application and production of—
- (a) a valid national identity card or passport issued by an EEA State; and
  - (b) proof that the applicant is such a family member.
- (4) The Secretary of State must issue a registration certificate to an EEA national who is a family member who has retained the right of residence on application and production of—
- (a) a valid national identity card or passport; and
  - (b) proof that the applicant is a family member who has retained the right of residence.
- (5) The Secretary of State may issue a registration certificate to an extended family member not falling within regulation 7(3) who is an EEA national on application if—
- (a) the application is accompanied or joined by a valid national identity card or passport;
  - (b) the relevant EEA national is a qualified person or an EEA national with a right of permanent residence under regulation 15; and
  - (c) in all the circumstances it appears to the Secretary of State appropriate to issue the registration certificate.
- (6) Where the Secretary of State receives an application under paragraph (5) an extensive examination of the personal circumstances of the applicant must be undertaken by the Secretary of State and if the application is refused, the Secretary of State must give reasons justifying the refusal unless this is contrary to the interests of national security.
- (7) A registration certificate issued under this regulation must state the name and address of the person registering and the date of registration.
- (8) A registration certificate is—
- (a) proof of the holder's right to reside on the date of issue;
  - (b) no longer valid if the holder ceases to have a right to reside under these Regulations;
  - (c) invalid if the holder never had a right to reside under these Regulations.
- (9) This regulation is subject to regulations 24 (refusal to issue or renew and revocation of residence documentation) and 25 (cancellation of a right of residence).

### **Issue of residence card**

- 18.**—(1) The Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person or of an EEA national with a right of permanent residence under regulation 15 on application and production of—
- (a) a valid passport; and
  - (b) proof that the applicant is such a family member.
- (2) The Secretary of State must issue a residence card to a person who is not an EEA national but who is a family member who has retained the right of residence on application and production of—
- (a) a valid passport; and
  - (b) proof that the applicant is a family member who has retained the right of residence.

(3) On receipt of an application under paragraph (1) or (2) and the documents that are required to accompany the application the Secretary of State must immediately issue the applicant with a certificate of application for the residence card and the residence card must be issued no later than six months after the date on which the application and documents are received.

(4) The Secretary of State may issue a residence card to an extended family member not falling within regulation 7(3) who is not an EEA national on application if—

- (a) the application is accompanied or joined by a valid passport;
- (b) the relevant EEA national is a qualified person or an EEA national with a right of permanent residence under regulation 15; and
- (c) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.

(5) Where the Secretary of State receives an application under paragraph (4) an extensive examination of the personal circumstances of the applicant must be undertaken by the Secretary of State and if the application is refused, the Secretary of State must give reasons justifying the refusal unless this is contrary to the interests of national security.

(6) A residence card issued under this regulation is valid for—

- (a) five years from the date of issue; or
- (b) in the case of a residence card issued to the family member or extended family member of a qualified person, the envisaged period of residence in the United Kingdom of the qualified person,

whichever is the shorter.

(7) A residence card—

- (a) must be called “Residence card of a family member of an EEA national”;
- (b) is proof of the holder’s right to reside on the date of issue;
- (c) is no longer valid if the holder ceases to have a right to reside under these Regulations;
- (d) is invalid if the holder never had a right to reside under these Regulations.

(8) This regulation is subject to regulations 24 and 25.

### **Issue of a document certifying permanent residence and a permanent residence card**

**19.—**(1) The Secretary of State must, as soon as possible, issue an EEA national with a right of permanent residence under regulation 15 with a document certifying permanent residence on application and the production of—

- (a) a valid national identity card or passport issued by an EEA State; and
- (b) proof that the EEA national has a right of permanent residence.

(2) The Secretary of State must issue a person who is not an EEA national who has a right of permanent residence under regulation 15 with a permanent residence card no later than six months after an application is received and the production of—

- (a) a valid passport; and
- (b) proof that the person has a right of permanent residence.

(3) Subject to paragraph (4) a permanent residence card is valid for ten years from the date of issue and must be renewed on application.

(4) A document certifying permanent residence and a permanent residence card is—

- (a) proof that the holder had a right to reside under regulation 15 on the date of issue;

- (b) no longer valid if the holder ceases to have a right of permanent residence under regulation 15;
- (c) invalid if the holder never had a right of permanent residence under regulation 15.
- (5) This regulation is subject to regulations 24 and 25.

#### **Issue of a derivative residence card**

**20.**—(1) The Secretary of State must issue a person with a derivative residence card on application and on production of—

- (a) a valid national identity card issued by an EEA State or a valid passport; and
- (b) proof that the applicant has a derivative right to reside under regulation 16.

(2) On receipt of an application under paragraph (1) the Secretary of State must issue the applicant with a certificate of application as soon as possible.

(3) A derivative residence card issued under paragraph (1) is valid until—

- (a) the date five years from the date of issue; or
- (b) any earlier date specified by the Secretary of State when issuing the derivative residence card.

(4) A derivative residence card issued under paragraph (1) must be issued as soon as practicable.

(5) A derivative residence card is—

- (a) proof of the holder's derivative right to reside on the day of issue;
- (b) no longer valid if the holder ceases to have a derivative right to reside under regulation 16;
- (c) invalid if the holder never had a derivative right to reside under regulation 16.

(6) This regulation is subject to regulations 24 and 25.

#### **Procedure for applications for documentation under this Part and regulation 12**

**21.**—(1) An application for documentation under this Part, or for an EEA family permit under regulation 12, must be made—

- (a) online, submitted electronically using the relevant pages of [www.gov.uk](http://www.gov.uk); or
- (b) by post or in person, using the relevant application form specified by the Secretary of State on [www.gov.uk](http://www.gov.uk).

(2) All applications must—

- (a) be accompanied or joined by the evidence or proof required by this Part or regulation 12, as the case may be, as well as that required by paragraph (4), within the time specified by the Secretary of State on [www.gov.uk](http://www.gov.uk); and
- (b) be complete.

(3) An application for a residence card or a derivative residence card must be submitted while the applicant is in the United Kingdom.

(4) When an application is submitted otherwise than in accordance with the requirements in this regulation, it is invalid.

(5) Where an application for documentation under this Part is made by a person who is not an EEA national on the basis that the person is or was the family member of an EEA national or an extended family member of an EEA national, the application must be accompanied or joined by a valid national identity card or passport in the name of that EEA national.

(6) Where—

- (a) there are circumstances beyond the control of an applicant for documentation under this Part; and
  - (b) as a result, the applicant is unable to comply with the requirements to submit an application online or using the application form specified by the Secretary of State,
- the Secretary of State may accept an application submitted by post or in person which does not use the relevant application form specified by the Secretary of State.

### **Verification of a right of residence**

- 22.**—(1) This regulation applies where the Secretary of State—
- (a) has reasonable doubt as to whether a person (“A”) has a right to reside or a derivative right to reside; or
  - (b) wants to verify the eligibility of a person (“A”) to apply for an EEA family permit or documentation issued under Part 3.
- (2) Where this regulation applies, the Secretary of State may invite A to—
- (a) provide evidence to support the existence of a right to reside or a derivative right to reside (as the case may be), or to support an application for an EEA family permit or documentation under this Part; or
  - (b) attend an interview with the Secretary of State.
- (3) If A purports to have a right to reside on the basis of a relationship with another person (“B”), (including, where B is a British citizen, through having lived with B in another EEA State), the Secretary of State may invite B to—
- (a) provide information about their relationship or residence in another EEA State; or
  - (b) attend an interview with the Secretary of State.
- (4) If without good reason A or B (as the case may be)—
- (a) fails to provide the information requested;
  - (b) on at least two occasions, fails to attend an interview if so invited;
- the Secretary of State may draw any factual inferences about A’s entitlement to a right to reside as appear appropriate in the circumstances.
- (5) The Secretary of State may decide following the drawing of an inference under paragraph (4) that A does not have or ceases to have a right to reside.
- (6) But the Secretary of State must not decide that A does not have or ceases to have a right to reside on the sole basis that A failed to comply with this regulation.
- (7) This regulation may not be invoked systematically.

## **PART 4**

### **REFUSAL OF ADMISSION AND REMOVAL ETC**

#### **Exclusion and removal from the United Kingdom**

- 23.**—(1) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if a refusal to admit that person is justified on grounds of public policy, public security or public health in accordance with regulation 27.

(2) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if that person is subject to a deportation or exclusion order, except where the person is temporarily admitted pursuant to regulation 41.

(3) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if the Secretary of State considers there to be reasonable grounds to suspect that the person's admission would lead to the misuse of a right to reside under regulation 26(1).

(4) A person is not entitled to be admitted to the United Kingdom as the family member of an EEA national under regulation 11(2) unless, at the time of arrival—

- (a) that person is accompanying the EEA national or joining the EEA national in the United Kingdom; and
- (b) the EEA national has a right to reside.

(5) If the Secretary of State considers that the exclusion of the EEA national or the family member of an EEA national is justified on the grounds of public policy, public security or public health in accordance with regulation 27 the Secretary of State may make an order prohibiting that person from entering the United Kingdom.

(6) Subject to paragraphs (7) and (8), an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if—

- (a) that person does not have or ceases to have a right to reside under these Regulations;
- (b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 27; or
- (c) the Secretary of State has decided that the person's removal is justified on grounds of misuse of rights under regulation 26(3).

(7) A person must not be removed under paragraph (6)—

- (a) as the automatic consequence of having recourse to the social assistance system of the United Kingdom; or
- (b) if that person has leave to remain in the United Kingdom under the 1971 Act unless that person's removal is justified on the grounds of public policy, public security or public health in accordance with regulation 27.

(8) A decision under paragraph (6)(b) must state that upon execution of any deportation order arising from that decision, the person against whom the order was made is prohibited from entering the United Kingdom—

- (a) until the order is revoked; or
- (b) for the period specified in the order.

(9) A decision taken under paragraph (6)(b) or (c) has the effect of terminating any right to reside otherwise enjoyed by the individual concerned.

#### **Refusal to issue or renew and revocation of residence documentation**

**24.—**(1) The Secretary of State may refuse to issue, revoke or refuse to renew a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card if the refusal or revocation is justified on grounds of public policy, public security or public health, or on grounds of misuse of rights in accordance with regulation 26(3).

(2) A decision under regulation 23(6) or 32(4) to remove a person from the United Kingdom, or a decision under regulation 31 to revoke a person's admission to the United Kingdom invalidates a registration certificate, residence card, document certifying permanent residence or permanent residence card held by that person or an application made by that person for such a certificate, card or document.

(3) The Secretary of State may revoke or refuse to renew a registration certificate or a residence card if the holder of the certificate or card has ceased to have, or never had, a right to reside under these Regulations.

(4) The Secretary of State may revoke or refuse to renew a document certifying permanent residence or a permanent residence card if the holder of the certificate or card has ceased to have, or never had, a right of permanent residence under regulation 15.

(5) An immigration officer may, at the time of a person's arrival in the United Kingdom—

(a) revoke that person's residence card if the person is not at that time the family member of a qualified person or of an EEA national who has a right of permanent residence under regulation 15, a family member who has retained a right of residence or a person with a right of permanent residence under regulation 15;

(b) revoke that person's permanent residence card if the person is not at that time a person with a right of permanent residence under regulation 15.

(6) An entry clearance officer may at any time revoke a person's EEA family permit if—

(a) the revocation is justified on grounds of public policy, public security or public health; or

(b) the person is not at that time the family member of an EEA national with the right to reside in the United Kingdom under these Regulations or is not accompanying that EEA national or joining that EEA national in the United Kingdom.

(7) Any action taken under this regulation on grounds of public policy, public security or public health must be in accordance with regulation 27.

### **Cancellation of a right of residence**

**25.—**(1) Where the conditions in paragraph (2) are met the Secretary of State may cancel a person's right to reside.

(2) The conditions in this paragraph are met where—

(a) a person has a right to reside in the United Kingdom as a result of these Regulations;

(b) the Secretary of State has decided that the cancellation of that person's right to reside in the United Kingdom is justified on the grounds of public policy, public security or public health in accordance with regulation 27 or on grounds of misuse of rights in accordance with regulation 26(3);

(c) the circumstances are such that the Secretary of State cannot make a decision under regulation 24(1); and

(d) it is not possible for the Secretary of State to remove the person from the United Kingdom under regulation 23(6)(b) or (c).

### **Misuse of a right to reside**

**26.—**(1) The misuse of a right to reside occurs where a person—

(a) observes the requirements of these Regulations in circumstances which do not achieve the purpose of these Regulations (as determined by reference to Council [Directive 2004/38/EC](#) and the EU Treaties); and

(b) intends to obtain an advantage from these Regulations by engaging in conduct which artificially creates the conditions required to satisfy the criteria set out in these Regulations.

(2) Such misuse includes attempting to enter the United Kingdom within 12 months of being removed under regulation 23(6)(a), where the person attempting to do so is unable to provide

evidence that, upon re-entry to the United Kingdom, the conditions for a right to reside, other than the initial right of residence under regulation 13, will be met.

(3) The Secretary of State may take an EEA decision on the grounds of misuse of rights where there are reasonable grounds to suspect the misuse of a right to reside and it is proportionate to do so.

(4) Where, as a result of paragraph (2), the removal of a person under regulation 23(6)(a) may prevent that person from returning to the United Kingdom during the 12 month period following removal, during that 12 month period the person who was removed may apply to the Secretary of State to have the effect of paragraph (2) set aside on the grounds that there has been a material change in the circumstances which justified that person's removal under regulation 23(6)(a).

(5) An application under paragraph (4) may only be made whilst the applicant is outside the United Kingdom.

(6) This regulation may not be invoked systematically.

### **Decisions taken on grounds of public policy, public security and public health**

**27.**—(1) In this regulation, a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

- (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
- (b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989<sup>(14)</sup>.

(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—

- (a) the decision must comply with the principle of proportionality;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person's previous criminal convictions do not in themselves justify the decision;
- (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person (“P”) who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of

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<sup>(14)</sup> Treaty Series No. 44 (1992) Cmd 1976 at <http://treaties.fco.gov.uk/docs/pdf/1992/TS0044.pdf>.

residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

(7) In the case of a relevant decision taken on grounds of public health—

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010(15); or

(b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom,

does not constitute grounds for the decision.

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).

#### **Application of Part 4 to a person with a derivative right to reside**

**28.**—(1) This regulation applies where a person—

(a) would, but for this Part of these Regulations, be entitled to a derivative right to reside (other than a derivative right to reside conferred by regulation 16(3));

(b) holds a derivative residence card; or

(c) has applied for a derivative residence card.

(2) Where this regulation applies, this Part of these Regulations applies as though—

(a) references to “the family member of an EEA national” referred instead to “a person with a derivative right to reside”;

(b) references to a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card referred instead to a “derivative residence card”;

(c) regulation 24(5) instead conferred on an immigration officer the power to revoke a derivative residence card where the holder is not at that time a person with a derivative right to reside; and

(d) regulations 24(4) and 27(3) and (4) were omitted.

## **PART 5**

### **PROCEDURE IN RELATION TO EEA DECISIONS**

#### **Person claiming right of admission**

**29.**—(1) This regulation applies to a person who claims a right of admission to the United Kingdom under regulation 11 as—

(a) a person, not being an EEA national, who—

(i) is a family member of an EEA national;

(ii) is a family member who has retained the right of residence;

(iii) has a derivative right to reside;

(iv) has a right of permanent residence under regulation 15; or

(v) is in possession of a qualifying EEA State residence card;



- (b) an EEA national, where there is reason to believe that the EEA national may be a person to whom regulation 23(1), (2), (3) or (4) applies; or
  - (c) a person to whom regulation 41 applies (temporary admission to submit case in person).
- (2) A person to whom this regulation applies is to be treated as if that person were a person seeking leave to enter the United Kingdom under the 1971 Act for the purposes of paragraphs 2, 3, 4, 7, 16 to 18A and 21 to 24 of Schedule 2 to the 1971 Act (administrative provisions as to control on entry etc)(16), except that—
- (a) the reference in paragraph 2(1) to the purpose for which the immigration officer may examine any persons who have arrived in the United Kingdom is to be read as a reference to the purpose of determining whether the person is to be granted admission under these Regulations;
  - (b) the references in paragraphs 3, 7 and 16(1) to a person who is, or may be, given leave to enter are to be read as references to a person who is, or may be, granted admission under these Regulations; and
  - (c) a medical examination is not to be carried out under paragraph 2 or paragraph 7 as a matter of routine and may only be carried out within three months of the person's arrival in the United Kingdom.
- (3) For so long as a person to whom this regulation applies is detained, or temporarily admitted or released whilst liable to detention, under the powers conferred by Schedule 2 to the 1971 Act, that person is deemed not to have been admitted to the United Kingdom.

### **Person refused admission**

- 30.**—(1) This regulation applies to a person who is in the United Kingdom and has been refused admission to the United Kingdom—
- (a) because that person does not meet the requirements of regulation 11 (including where that person does not meet those requirements because that person's EEA family permit, residence card, derivative residence card or permanent residence card has been revoked by an immigration officer in accordance with regulation 24); or
  - (b) in accordance with regulation 23(1), (2), (3) or (4).
- (2) A person to whom this regulation applies, is to be treated as if the person were a person refused leave to enter under the 1971 Act for the purpose of paragraphs 8, 10, 10A, 11, 16 to 19 and 21 to 24 of Schedule 2 to the 1971 Act(17), except that the reference in paragraph 19 to a certificate of entitlement, entry clearance or work permit is to be read as a reference to an EEA family permit,

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(16) The relevant parts of Schedule 2 were amended by the Criminal Justice Act 1972 (c. 71), Schedule 6, the British Nationality Act 1981, Schedule 4, paragraphs 2 and 3, the Immigration Act 1988, the Schedule, paragraphs 6, 8, 9 and 10, the Asylum and Immigration Act 1996 (c. 49), Schedule 2, paragraphs 5, 7, 10 and 11 and Schedule 4, the Access to Justice Act 1999 (c. 22), Schedule 13, paragraph 70, the 1999 Act, section 140, Schedule 14, paragraphs 43, 56, 58 to 63 and Schedule 16, the 2002 Act, sections 63, 64 and 73, and Schedule 7, paragraphs 3 and 4, the Courts Act 2003 (c. 39), Schedule 8, paragraph 149, the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), Schedule 2, paragraph 1, the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 27 and 42 and Schedule 3, the Immigration Act 2014, sections 5, 7, 9 and 13, Schedule 1, paragraphs 1 and 2, Schedule 2, paragraphs 1 and Schedule 8, paragraphs 1, 2 and 3, the Immigration Act 2016, sections 46 and 60, and S.I. 2010/21, Schedule 1, paragraphs 1 and 2.

(17) The relevant parts of Schedule 2 were amended by the Criminal Justice Act 1972, Schedule 6, the British Nationality Act 1981, Schedule 4, paragraph 3(1), the Immigration Act 1988, section 10 and the Schedule, paragraphs 6, 9 and 10, the Asylum and Immigration Act 1996, section 12, Schedule 2, paragraphs 7, 8, 10 and 11 and Schedule 4, the Access to Justice Act 1999, Schedule 13, paragraph 70, the 1999 Act, sections 140 and 169, Schedule 14, paragraphs 43, 60, 62 and 63, and Schedule 16, the 2002 Act, sections 63, 64 and 73, and Schedule 7, paragraphs 3 and 4, the Courts Act 2003, Schedule 8, paragraph 149, the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, Schedule 2, paragraph 1, the Immigration, Asylum and Nationality Act 2006, section 42, the Immigration Act 2014, sections 4, 5, 7, 12(4), 13, and 73(6), Schedule 1, paragraphs 1 and 2(1), Schedule 2, paragraphs 1 and 4, and Schedule 9, paragraph 1, the Immigration Act 2016, sections 5, 9 and 60, and S.I. 2010/21, Schedule 1, paragraphs 1 and 2.

residence card, derivative residence card, a qualifying EEA State residence card, or a permanent residence card.

### **Revocation of admission**

**31.**—(1) This regulation applies to a person admitted to the United Kingdom under regulation 11 in circumstances where, under regulation 23(1), (2) or (3) that person was not entitled to be admitted.

(2) Paragraph 6(2) of Schedule 2 to the 1971 Act (administrative provisions as to control on entry: refusal of leave to enter) applies to a person to whom this regulation applies, as though the references:

- (a) to that person's examination under paragraph 2 of Schedule 2 to the 1971 Act were to that paragraph as applied by regulation 29(2)(a) and (c);
- (b) to notices of leave to enter the United Kingdom were to a decision to admit that person to the United Kingdom under these Regulations; and
- (c) to the cancellation of such a notice and the refusal of leave to enter were to revocation of the decision to admit that person to the United Kingdom under this regulation.

(3) Where a person's admission to the United Kingdom is revoked, that person is to be treated as a person to whom admission to the United Kingdom has been refused and regulation 30 applies accordingly.

### **Person subject to removal**

**32.**—(1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the United Kingdom under regulation 23(6)(b), that person may be detained under the authority of the Secretary of State pending a decision whether or not to remove the person under that regulation, and paragraphs 17 to 18A of Schedule 2 to the 1971 Act apply in relation to the detention of such a person as those paragraphs apply in relation to a person who may be detained under paragraph 16 of that Schedule.

(2) Where a decision is taken to remove a person under regulation 23(6)(a) or (c), the person is to be treated as if the person were a person to whom section 10(1) of the 1999 Act(**18**) applies, and section 10 of that Act (removal of certain persons unlawfully in the United Kingdom) is to apply accordingly.

(3) Where a decision is taken to remove a person under regulation 23(6)(b), the person is to be treated as if the person were a person to whom section 3(5)(a) of the 1971 Act(**19**) (liability to deportation) applies, and section 5 of that Act(**20**) (procedure for deportation) and Schedule 3 to that Act(**21**) (supplementary provision as to deportation) are to apply accordingly.

(4) A person who enters the United Kingdom in breach of a deportation or exclusion order, or in circumstances where that person was not entitled to be admitted under regulation 23(1) or (3), is removable as an illegal entrant under Schedule 2 to the 1971 Act and the provisions of that Schedule apply accordingly.

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(18) Section 10(1) was amended by the Immigration Act 2014, section 1.

(19) Section 3(5)(a) was amended by the 1999 Act, Schedule 14, paragraphs 43 and 44.

(20) Section 5 was amended by British Nationality Act 1981, Schedule 4, paragraph 2, the Immigration Act 1988, Schedule, paragraph 2, the Asylum and Immigration Act 1996, Schedule 2, paragraph 2 and the Civil Partnership Act 2004 (c. 33), Schedule 27, paragraph 37.

(21) Schedule 3 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 10, paragraphs 1 and 2, the Immigration Act 1988, Schedule 10, paragraph 10, the Asylum and Immigration Act 1996, Schedule 2, paragraph 13, the 1999 Act, section 54 and Schedule 14, paragraphs 43 and 68, the 2002 Act, Schedule 7, paragraphs 7 and 8, the Courts Act 2003, Schedule 8, paragraph 150 and Schedule 10, the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, section 34, the Immigration, Asylum and Nationality Act 2006, section 53, the Immigration Act 2014, Schedule 1, paragraph 2(2), and Schedule 9, paragraphs 9, 20 and 24, and the Immigration Act 2016, section 60.

(5) Where a deportation order is made against a person but the person is not removed under the order during the two year period beginning on the date on which the order is made, the Secretary of State may only take action to remove the person under the order at the end of that period if, having assessed whether there has been any material change in circumstances since the deportation order was made, the Secretary of State considers that the removal continues to be justified on the grounds of public policy, public security or public health.

(6) A person to whom this regulation applies must be allowed one month to leave the United Kingdom, beginning on the date on which the decision to remove is communicated before being removed because of that decision except—

- (a) in duly substantiated cases of urgency;
- (b) where the person is detained pursuant to the sentence or order of any court;
- (c) where the person is a person to whom paragraph (4) applies.

(7) Paragraph (6) does not apply where a decision has been taken under regulation 23(6) on the basis that the relevant person—

- (a) has ceased to have a derivative right to reside; or
- (b) is a person who would have had a derivative right to reside but for the effect of a decision to remove under regulation 23(6)(b).

### **Human rights considerations and interim orders to suspend removal**

**33.**—(1) This regulation applies where the Secretary of State intends to give directions for the removal of a person (“P”) to whom regulation 32(3) applies, in circumstances where—

- (a) P has not appealed against the EEA decision to which regulation 32(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<sup>(22)</sup> (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 removal 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.

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(22) 1998 c. 42; section 6 was amended by the Constitutional Reform Act 2005 (c. 4), section 40, Schedule 9, paragraph 66, and Schedule 18, Part 5.

**Revocation of deportation and exclusion orders**

**34.**—(1) An exclusion order remains in force unless it is revoked by the Secretary of State under this regulation.

(2) A deportation order remains in force—

- (a) until the order is revoked under this regulation; or
- (b) for the period specified in the order.

(3) A person who is subject to a deportation or exclusion order may only apply to the Secretary of State to have it revoked on the basis that there has been a material change in the circumstances that justified the making of the order.

(4) An application under paragraph (3) must set out the material change in circumstances relied upon by the applicant and may only be made whilst the applicant is outside the United Kingdom.

(5) On receipt of an application under paragraph (3), the Secretary of State must revoke the order if the Secretary of State considers that the criteria for making such an order are no longer satisfied.

(6) The Secretary of State must take a decision on an application under paragraph (2) no later than six months after the date on which the application is received.

**PART 6****APPEALS UNDER THESE REGULATIONS****Interpretation of Part 6**

**35.**—(1) In this Part—

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997<sup>(23)</sup>;

“Commission” has the same meaning as in the 1997 Act.

(2) For the purposes of this Part, and subject to paragraphs (3) and (4), an appeal is to be treated as pending during the period when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.

(3) 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.

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

**Appeal rights**

**36.**—(1) The subject of an EEA decision may appeal against that decision under these Regulations.

(2) If a person claims to be an EEA national, that person may not appeal under these Regulations without producing a valid national identity card or passport issued by an EEA State.

(3) If a person claims to be in a durable relationship with an EEA national, that person may not appeal under these Regulations without producing—

- (a) a valid passport; and
- (b) either—

(23) 1997 c. 68.

- (i) an EEA family permit; or
- (ii) sufficient evidence to satisfy the Secretary of State that the person is in a relationship with the EEA national.

(4) If a person to whom paragraph (2) does not apply claims to be the family member of an EEA national under regulation 7, the relative of an EEA national who is an extended family member under regulation 8, or a family member who has retained the right of residence under regulation 10, that person may not appeal under these Regulations without producing—

- (a) a valid passport; and
- (b) either—
  - (i) an EEA family permit
  - (ii) a qualifying EEA State residence card;
  - (iii) in the case of a person claiming to be the family member of an EEA national, proof that the criteria in regulation 7 are met; or
  - (iv) in the case of a person claiming to be a family member who has retained the right of residence, proof that the criteria in regulation 10 are met.

(5) If a person (“P”) claims to have a derivative right to reside, P may not appeal under these Regulations unless P produces a valid national identity card issued by an EEA State or a valid passport, and either—

- (a) an EEA family permit; or
- (b) where P claims to have a derivative right to reside as a result of—
  - (i) regulation 16(2), proof that P is a direct relative or legal guardian of an EEA national who is under the age of 18;
  - (ii) regulation 16(3), proof that P is the child of an EEA national;
  - (iii) regulation 16(4), proof that P is a direct relative or legal guardian of the child of an EEA national;
  - (iv) regulation 16(5), proof that P is a direct relative or legal guardian of a British citizen;
  - (v) regulation 16(6), proof that P is under the age of 18 and is a dependant of a person satisfying the criteria in paragraph (i), (iii) or (iv).

(6) If a person claims to be entitled to a right to reside under regulation 9 (family members of British citizens), that person may not appeal without producing a valid passport and either—

- (a) an EEA family permit; or
- (b) a qualifying EEA State residence card; and
  - (i) proof that the criteria to be a family member of the British citizen are met; and
  - (ii) proof that the British citizen is residing, or did reside, in another EEA State as a worker, self-employed person, self-sufficient person or student.

(7) The Secretary of State or an immigration officer may certify a ground for the purposes of paragraph (8) if it has been considered in a previous appeal brought under these Regulations or under section 82(1) of the 2002 Act<sup>(24)</sup>.

(8) A person may not bring an appeal under these Regulations on a ground certified under paragraph (7) or rely on such a ground in an appeal brought under these Regulations.

(9) Except where an appeal lies to the Commission, an appeal under these Regulations lies to the First-tier Tribunal.

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<sup>(24)</sup> Section 82(1) was amended by the Immigration Act 2014, section 15.

(10) The provisions of, or made under, the 2002 Act referred to in Schedule 2 have effect for the purposes of an appeal under these Regulations to the First-tier Tribunal in accordance with that Schedule.

(11) Nothing in this Part prevents a person who has a right of appeal under this regulation from appealing to the First-tier Tribunal under section 82(1) of the 2002 Act (right of appeal to the Tribunal), or, where relevant, to the Commission pursuant to section 2 of the 1997 Act (jurisdiction of the Commission: appeals)(25), provided the criteria for bringing such an appeal under those Acts are met.

### **Out of country appeals**

**37.**—(1) Subject to paragraph (2), a person may not appeal under regulation 36 whilst in the United Kingdom against an EEA decision—

- (a) to refuse to admit that person to the United Kingdom;
- (b) to revoke that person's admission to the United Kingdom;
- (c) to make an exclusion order against that person;
- (d) to refuse to revoke a deportation or exclusion order made against the person;
- (e) to refuse to issue the person with an EEA family permit;
- (f) to revoke, or to refuse to issue or renew any document under these Regulations where that decision is taken at a time when the person is outside the United Kingdom; or
- (g) to remove the person from the United Kingdom following entry to the United Kingdom in breach of a deportation or exclusion order, or in circumstances where that person was not entitled to be admitted pursuant to regulation 23(1), (2), (3) or (4).

(2) Sub-paragraphs (a) to (c) of paragraph (1) do not apply where the person is in the United Kingdom and—

- (a) the person holds a valid EEA family permit, registration certificate, residence card, derivative residence card, document certifying permanent residence, permanent residence card or qualifying EEA State residence card on arrival in the United Kingdom or the person can otherwise prove that the person is resident in the United Kingdom; or
- (b) the person is deemed not to have been admitted to the United Kingdom under regulation 29(3) but at the date on which notice of the decision to refuse admission is given the person has been in the United Kingdom for at least 3 months.

### **Appeals to the Commission**

**38.**—(1) An appeal against an EEA decision lies to the Commission where paragraph (2) or (4) applies.

(2) This paragraph applies if the Secretary of State certifies that the EEA decision was taken—

- (a) by the Secretary of State wholly or partly on a ground listed in paragraph (3); or
- (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in paragraph (3).

(3) The ground mentioned in paragraph (2) are that the person's exclusion or removal from the United Kingdom is—

- (a) in the interests of national security; or
- (b) in the interests of the relationship between the United Kingdom and another country.

(25) Section 2 was amended by the 2002 Act, Schedule 7, paragraph 20, the Immigration, Asylum and Nationality Act 2006, Schedule 1, paragraph 14, and the Immigration Act 2014, Schedule 9, paragraph 26.

(4) This paragraph applies if the Secretary of State certifies that the EEA decision was taken wholly or partly in reliance on information which the Secretary of State considers must not be made public—

- (a) in the interests of national security;
- (b) in the interests of the relationship between the United Kingdom and another country; or
- (c) otherwise in the public interest.

(5) In paragraphs (2) and (4) the reference to the Secretary of State is a reference to the Secretary of State acting in person.

(6) Where a certificate is issued under paragraph (2) or (4) in respect of a pending appeal to the First-tier Tribunal or Upper Tribunal the appeal must lapse.

(7) An appeal against an EEA decision lies to the Commission where an appeal lapses by virtue of paragraph (6).

(8) The 1997 Act applies to an appeal to the Commission under this regulation as it applies to an appeal under section 2 of that Act.

(9) Where the 1997 Act applies to an appeal to the Commission under this regulation, section 2(2) of that Act is to be treated as though it applies the 2002 Act to that appeal in the form modified by Schedule 2 to these Regulations.

#### **National Security: EEA Decisions**

**39.**—(1) Section 97A of the 2002 Act<sup>(26)</sup> applies to an appeal against an EEA decision where the Secretary of State has certified under regulation 38(2) or (4) that the EEA decision was taken in the interests of national security.

- (2) Where section 97A so applies, it has effect as if—
  - (a) the references in that section to a deportation order were to an EEA decision;
  - (b) subsections (1), (1A), (2)(b) and (4) were omitted;
  - (c) the reference in subsection (2)(a) to section 79 were a reference to regulations 37(2) and 40 of these Regulations; and
  - (d) in subsection (2A) for sub-paragraphs (a) and (b), “against an EEA decision” were substituted.

#### **Effect of appeals to the First-tier Tribunal or Upper Tribunal**

**40.**—(1) This regulation applies to appeals under these Regulations made to the First-tier Tribunal or Upper Tribunal.

(2) If a person in the United Kingdom appeals against an EEA decision refusing admission to the United Kingdom (other than a decision under regulation 23(1), (2), or (5)), any directions for that person’s removal from the United Kingdom previously given by virtue of the refusal cease to have effect, except in so far as they have already been carried out, while the appeal is pending.

(3) If a person in the United Kingdom appeals against an EEA decision concerning that person’s removal from the United Kingdom (other than a decision under regulation 23(6)(b)), any directions for removal given under section 10 of the 1999 Act or Schedule 3 to the 1971 Act are to have no effect, except in so far as they have already been carried out, while the appeal is pending.

(4) The provisions of Part 1 of Schedule 2, or as the case may be, Schedule 3 to the 1971 Act concerning detention and persons liable to detention, apply to a person appealing against a refusal of

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<sup>(26)</sup> Section 97A was inserted by the Immigration, Asylum and Nationality Act 2006, section 7 and amended by the Crime and Courts Act 2013 (c. 22), section 54 and the Immigration Act 2014, Schedule 9, paragraph 43.



admission, a decision to revoke admission, or a removal decision as if there were in force directions for that person's removal from the United Kingdom, except that the person may not be detained on board a ship or aircraft so as to compel that person to leave the United Kingdom while the appeal is pending.

(5) In paragraph (4), the words "except that the person" to the end do not apply to an EEA decision to which regulation 33 applies (human rights considerations and interim orders to suspend removal).

(6) 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
- (b) the giving of a notice of intention to give such directions,

any period during which there is an appeal pending by that person is to be disregarded (except in cases where the EEA decision was taken under regulation 23(1), (2), (5) and (6)(b)).

(7) Paragraph 29 of Schedule 2 to the 1971 Act (grant of bail pending appeal)<sup>(27)</sup> applies to a person who has an appeal pending under these Regulations as it applies to a person who has an appeal pending under section 82(1) of the 2002 Act.

### **Temporary admission to submit case in person**

**41.**—(1) This regulation applies where—

- (a) a person ("P") is subject to a decision to remove made under regulation 23(6)(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;
- (d) P wants to make submissions before the First-tier Tribunal or Upper Tribunal in person; and
- (e) P is outside the United Kingdom.

(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, 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 appeal (but P may apply to return to the United Kingdom to make submissions in person during the remaining stages of the appeal 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

<sup>(27)</sup> Paragraph 29 was amended by the 2002 Act, Schedule 7, paragraph 6, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Schedule 2, paragraph 1, and Schedule 4, and the Immigration Act 2014, section 7, [SI 2010/21](#), Schedule 1, paragraphs 1 and 2.



leave to enter under the 1971 Act for the purposes of paragraphs 8, 10, 10A, 11, 16 to 18A and 21 to 24 of Schedule 2 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 is deemed not to have been admitted to the United Kingdom during any time during which P is temporarily admitted pursuant to this regulation.

#### **Alternative evidence of identity and nationality**

**42.**—(1) Subject to paragraph (2), where a provision of these Regulations requires a person to hold or produce a valid national identity card issued by an EEA State or a valid passport, the Secretary of State may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required document due to circumstances beyond the person's control.

- (2) This regulation does not apply to regulation 11.

## **PART 7**

### **GENERAL**

#### **Effect on other legislation**

- 43.** Schedule 3 (effect on other legislation) has effect.

#### **Substitution of regulation 9 of the 2006 Regulations**

- 44.** Schedule 5 (transitory provisions) has effect.

#### **Revocations, savings, transitory and transitional provisions and consequential modifications**

**45.** Schedule 4 (revocations and savings), Schedule 6 (transitional provisions) and Schedule 7 (consequential modifications) have effect.

#### **Revocation of regulation 44 and Schedule 5**

- 46.** The following are revoked—
- (a) regulation 44;
  - (b) Schedule 5.

2nd November 2016

*Robert Goodwill*  
Minister of State  
Home Office