
STATUTORY INSTRUMENTS

2016 No. 1052

The Immigration (European Economic Area) Regulations 2016

PART 4

REFUSAL OF ADMISSION AND REMOVAL ETC

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](#)(1) 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.