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STATUTORY INSTRUMENTS

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**2000 No. 2326**

**IMMIGRATION**

**The Immigration (European Economic Area) Regulations 2000**

*Made* - - - - *30th August 2000*  
*Laid before Parliament* *1st September 2000*  
*Coming into force* - - *2nd October 2000*

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred on him by the said section 2(2), and of the powers conferred on him by section 80 of the Immigration and Asylum Act 1999<sup>(3)</sup>, hereby makes the following Regulations:

**Part I**

**Interpretation Etc.**

**Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Immigration (European Economic Area) Regulations 2000 and shall come into force on 2nd October 2000.

(2) Subject to paragraph (3), the Immigration (European Economic Area) Order 1994<sup>(4)</sup> is hereby revoked.

(3) Article 19 of the Order continues to have effect until the commencement of the repeal by the 1999 Act of the Immigration (Carriers' Liability) Act 1987<sup>(5)</sup>.

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(1) S.I.2000/1813.

(2) 1972 c. 68.

(3) 1999 c. 33.

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

(5) 1987 c. 24, amended by S.I. 1991/1497, article 2, and by section 12 of the Asylum and Immigration Appeals Act 1993. See the 1999 Act, Schedule 16 (repeals).

## *Interpretation of Regulations*

### **General**

#### **2.—(1) In these Regulations—**

“the 1971 Act” means the Immigration Act 1971<sup>(6)</sup>;

“the 1999 Act” means the Immigration and Asylum Act 1999;

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

“EEA family permit” means a document issued to a person, in accordance with regulation 10 or 13, in connection with his admission to the United Kingdom;

“EEA national” means a national of an EEA State;

“EEA State” means a State, other than the United Kingdom, which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(7)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(8)</sup>;

“economic activity” means activity as a worker or self-employed person, or as a provider or recipient of services;

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

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

“Regulation 1251/70” means Commission Regulation (EEC) No. 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that State<sup>(9)</sup>;

“residence document” means a document issued to a person who is not an EEA national, in accordance with regulation 10 or 15, as proof of the holder’s right of residence in the United Kingdom;

“residence permit” means a permit issued to an EEA national, in accordance with regulation 10 or 15, as proof of the holder’s right of residence in the United Kingdom;

“spouse” does not include a party to a marriage of convenience;

“United Kingdom national” means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties;

“visa national” means a person who requires a visa for the United Kingdom because he is a national or citizen of one of the countries or territorial entities for the time being specified in the immigration rules<sup>(10)</sup>.

(2) In these Regulations unless the context otherwise requires a reference to a regulation is a reference to a regulation of these Regulations; and within a regulation a reference to a paragraph is to a paragraph of that regulation.

### **“Worker”, “self-employed person”, “provider” and “recipient” of services, “self-sufficient person”, “retired person” and “student”**

#### **3.—(1) In these Regulations—**

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(6) 1971 c. 77.

(7) OJ No. L 1, 3.1.94, p.3.

(8) OJ No. L 1, 3.1.94, p.571.

(9) OJ No. L 142, 30.6.70, p.24 (OJ/SE 1st Series 1970 vol. II, p.402).

(10) See Appendix 1 to the Statement of Changes in Immigration Rules (HC 395) laid before Parliament on 23 May 1994; the Appendix was substituted from 4 April 1996 (HC 329) and renamed Appendix 1 with effect from 11 May 1998 (Cmnd 3953), and paragraph 2(b) was substituted from 1 November 1996 (HC 31).

- (a) “worker” means a worker within the meaning of Article 39 of the EC Treaty;
- (b) “self-employed person” means a person who establishes himself in order to pursue activity as a self-employed person in accordance with Article 43 of the EC Treaty, or who seeks to do so;
- (c) “provider of services” means a person who provides, or seeks to provide, services within the meaning of Article 50 of the EC Treaty;
- (d) “recipient of services” means a person who receives, or seeks to receive, services within the meaning of Article 50 of the EC Treaty;
- (e) “self-sufficient person” means a person who—
  - (i) has sufficient resources to avoid his becoming a burden on the social assistance system of the United Kingdom; and
  - (ii) is covered by sickness insurance in respect of all risks in the United Kingdom;
- (f) “retired person” means a person who—
  - (i) has pursued an activity as an employed or self-employed person;
  - (ii) is in receipt of—
    - (aa) an invalidity or early retirement pension;
    - (bb) old age benefits;
    - (cc) survivor’s benefits; or
    - (dd) a pension in respect of an industrial accident or disease;sufficient to avoid his becoming a burden on the social security system of the United Kingdom; and
  - (iii) is covered by sickness insurance in respect of all risks in the United Kingdom;
- (g) “student” means a person who—
  - (i) is enrolled at a recognised educational establishment in the United Kingdom for the principal purpose of following a vocational training course;
  - (ii) assures the Secretary of State by means of a declaration, or by such alternative means as he may choose that are at least equivalent, that he has sufficient resources to avoid him becoming a burden on the social assistance system of the United Kingdom; and
  - (iii) is covered by sickness insurance in respect of all risks in the United Kingdom.

(2) For the purposes of paragraph (1)(e) and (f), resources or income are to be regarded as sufficient if they exceed the level in respect of which the recipient would qualify for social assistance.

**“Self-employed person who has ceased activity”**

- 4.—(1) In these Regulations, “self-employed person who has ceased activity” means—
- (a) a person who—
    - (i) on the day on which he terminates his activity as a self-employed person has reached the age at which he is entitled to a state pension;
    - (ii) has pursued such activity in the United Kingdom for at least the twelve months prior to its termination; and
    - (iii) has resided continuously in the United Kingdom for more than three years;
  - (b) a person who—
    - (i) has resided continuously in the United Kingdom for more than two years; and

- (ii) has terminated his activity as a self-employed person as a result of a permanent incapacity to work;
- (c) a person who—
  - (i) has resided and pursued activity as a self-employed person in the United Kingdom;
  - (ii) has terminated that activity as a result of a permanent incapacity to work; and
  - (iii) such incapacity is the result of an accident at work or an occupational illness which entitles him to a pension payable in whole or in part by the state;
- (d) a person who—
  - (i) has been continuously resident and continuously active as a self-employed person in the United Kingdom for three years; and
  - (ii) is active as a self-employed person in the territory of an EEA State but resides in the United Kingdom and returns to his residence at least once a week.
- (2) But, if the person is the spouse of a United Kingdom national—
  - (a) the conditions as to length of residence and activity in paragraph (1)(a) do not apply; and
  - (b) the condition as to length of residence in paragraph (1)(b) does not apply.
- (3) For the purposes of paragraph (1)(a) and (b) periods of activity completed in an EEA State by a person to whom paragraph (1)(d)(ii) applies are to be considered as having been completed in the United Kingdom.
- (4) For the purposes of paragraph (1)—
  - (a) periods of absence from the United Kingdom which do not exceed three months in any year or periods of absence from the United Kingdom on military service are not to be taken into account; and
  - (b) periods of inactivity caused by circumstances outside the control of the self-employed person and periods of inactivity caused by illness or accident are to be treated as periods of activity as a self-employed person.

**“Qualified person”**

5.—(1) In these Regulations, “qualified person” means a person who is an EEA national and in the United Kingdom as—

- (a) a worker;
- (b) a self-employed person;
- (c) a provider of services;
- (d) a recipient of services;
- (e) a self-sufficient person;
- (f) a retired person;
- (g) a student; or
- (h) a self-employed person who has ceased activity;

or who is a person to whom paragraph (4) applies.

- (2) A worker does not cease to be a qualified person solely because—
  - (a) he is temporarily incapable of work as a result of illness or accident; or
  - (b) he is involuntarily unemployed, if that fact is duly recorded by the relevant employment office.

(3) A self-employed person does not cease to be a qualified person solely because he is temporarily incapable of work as a result of illness or accident.

(4) This paragraph applies to—

- (a) the family member of a qualified person referred to in paragraph (1)(h), if—
  - (i) the qualified person has died; and
  - (ii) the family member was residing with him in the United Kingdom immediately before his death;
- (b) the family member of a qualified person referred to in paragraph 1(b) where—
  - (i) the qualified person has died;
  - (ii) the family member resided with him immediately before his death; and
  - (iii) either—
    - (aa) the qualified person had resided continuously in the United Kingdom for at least the two years immediately before his death; or
    - (bb) the death was the result of an accident at work or an occupational disease; or
    - (cc) his surviving spouse is a United Kingdom national.

(5) For the purposes of paragraph (4)(b), periods of absence from the United Kingdom which do not exceed three months in any year or periods of absence from the United Kingdom on military service are not to be taken into account.

### **“Family member”**

**6.—(1)** In these Regulations, paragraphs (2) to (4) apply in order to determine the persons who are family members of another person.

(2) If the other person is a student, the persons are—

- (a) his spouse; and
- (b) his dependent children.

(3) If he is a self-sufficient or retired person, the persons are—

- (a) his spouse;
- (b) descendants of his or of his spouse who are under 21 or are their dependants; and
- (c) dependent relatives in his ascending line or that of his spouse.

(4) In any other case, the persons are—

- (a) his spouse;
- (b) descendants of his or of his spouse who are under 21 or are their dependants;
- (c) dependent relatives in his ascending line or that of his spouse.

### *Interpretation of other legislation*

### **Carriers' liability**

**7.** For the purposes of satisfying a requirement to produce a visa under section 40(1)(b) of the 1999 Act (charges to carriers in respect of passengers without proper documents), a “valid visa of the required kind” includes a family permit or residence document required for admission as a visa national under regulation 12.

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

**8.**—(1) For the purposes of the 1971 Act<sup>(11)</sup> and the British Nationality Act 1981<sup>(12)</sup>, the following are to be regarded as persons who are in the United Kingdom without being subject under the immigration laws to any restriction on the period for which they may remain—

- (a) a self-employed person who has ceased activity;
- (b) the family member of such a person who was residing with that person in the United Kingdom immediately before that person ceased his activity in the United Kingdom;
- (c) a family member to whom regulation 5(4) applies;
- (d) a person who has rights under Regulation 1251/70;
- (e) a person who has been granted permission to remain in the United Kingdom indefinitely.

(2) However, a qualified person or family member who is not mentioned in paragraph (1) is not, by virtue of his status as a qualified person or the family member of a qualified person, to be so regarded for those purposes.

## **Part II**

### **Scope of Regulations**

#### **General**

**9.** Subject to regulations 10 and 11 (and to regulations 24(1), 25(1), 26(1) and 28) these Regulations apply solely to EEA nationals and their family members.

#### **Dependants and members of the household of EEA nationals**

**10.**—(1) If a person satisfies any of the conditions in paragraph (4), and if in all the circumstances it appears to the decision-maker appropriate to do so, the decision-maker may issue to that person an EEA family permit, a residence permit or a residence document (as the case may be).

(2) Where a permit or document has been issued under paragraph (1), these Regulations apply to the holder of the permit or document as if he were the family member of an EEA national and the permit or document had been issued to him under regulation 13 or 15.

(3) Without prejudice to regulation 22, a decision-maker may revoke (or refuse to renew) a permit or document issued under paragraph (1) if he decides that the holder no longer satisfies any of the conditions in paragraph (4).

(4) The conditions are that the person—

- (a) is dependent on the EEA national or his spouse;
- (b) is living as part of the EEA national's household outside the United Kingdom; or
- (c) was living as part of the EEA national's household before the EEA national came to the United Kingdom.

(5) However, for those purposes "EEA national" does not include—

- (a) an EEA national who is in the United Kingdom as a self-sufficient person, a retired person or a student;

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<sup>(11)</sup> See in particular section 33(2A) of the 1971 Act (definition of "settled in the United Kingdom"), inserted by section 39(6) of, and paragraph 7 of Schedule 4 to, the British Nationality Act 1981 (c. 61).

<sup>(12)</sup> 1981 c. 61; see in particular section 50(2) (definition of "settled in the United Kingdom").

- (b) an EEA national who, when he is in the United Kingdom, will be a person referred to in sub-paragraph (a).

### **Family members of United Kingdom nationals**

**11.**—(1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member of a United Kingdom national returning to the United Kingdom as if that person were the family member of an EEA national.

(2) The conditions are that—

- (a) after leaving the United Kingdom, the United Kingdom national resided in an EEA State and—
  - (i) was employed there (other than on a transient or casual basis); or
  - (ii) established himself there as a self-employed person;
- (b) the United Kingdom national did not leave the United Kingdom in order to enable his family member to acquire rights under these Regulations and thereby to evade the application of United Kingdom immigration law;
- (c) on his return to the United Kingdom, the United Kingdom national would, if he were an EEA national, be a qualified person; and
- (d) if the family member of the United Kingdom national is his spouse, the marriage took place, and the parties lived together in an EEA State, before the United Kingdom national returned to the United Kingdom.

## **Part III**

### **EEA Rights**

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

**12.**—(1) Subject to regulation 21(1), an EEA national must be admitted to the United Kingdom if he produces, on arrival, a valid national identity card or passport issued by an EEA State.

(2) Subject to regulation 21(1) and (2), a family member of an EEA national who is not himself an EEA national must be admitted to the United Kingdom if he produces, on arrival—

- (a) a valid national identity card issued by an EEA State, or a valid passport; and
- (b) either—
  - (i) where the family member is a visa national or a person who seeks to be admitted to instal himself with a qualified person, a valid EEA family permit or residence document; or
  - (ii) in all other cases (but only where required by an immigration officer) a document proving that he is a family member of a qualified person.

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

**13.**—(1) An entry clearance officer must issue an EEA family permit, free of charge, to a person who applies for one if he is a family member of—

- (a) a qualified person; or
- (b) a person who is not a qualified person, where that person—

- (i) will be travelling to the United Kingdom with the person who has made the application within a year of the date of the application; and
- (ii) will be a qualified person on arrival in the United Kingdom.

(2) But paragraph (1) does not apply if—

- (a) the applicant; or
- (b) the person whose family member he is

falls to be excluded from the United Kingdom on grounds of public policy, public security or public health.

### **Right of residence**

14.—(1) A qualified person is entitled to reside in the United Kingdom, without the requirement for leave to remain under the 1971 Act, for as long as he remains a qualified person.

(2) A family member of a qualified person is entitled to reside in the United Kingdom, without the requirement for such leave, for as long as he remains the family member of a qualified person.

(3) A qualified person and the family member of such a person may reside and pursue economic activity in the United Kingdom notwithstanding that his application for a residence permit or residence document (as the case may be) has not been determined by the Secretary of State.

(4) However, this regulation is subject to regulation 21(3)(b).

## **Part IV**

### **Residence Permits and Documents**

#### **Issue of residence permits and residence documents**

15.—(1) Subject to regulations 16 and 22(1), the Secretary of State must issue a residence permit to a qualified person on application and production of—

- (a) a valid identity card or passport issued by an EEA State; and
- (b) the proof that he is a qualified person.

(2) Subject to regulation 22(1), the Secretary of State must issue a residence permit to a family member of a qualified person (or, where the family member is not an EEA national, a residence document) on application and production of—

- (a) a valid identity card issued by an EEA State or a valid passport;
- (b) in the case of a family member who required an EEA family permit for admission to the United Kingdom, such a permit; and
- (c) in the case of a person not falling within sub-paragraph (b), proof that he is a family member of a qualified person.

(3) In the case of a worker, confirmation of the worker's engagement from his employer or a certificate of employment is sufficient proof for the purposes of paragraph (1)(b).

#### **Where no requirement to issue residence permit**

16.—(1) The Secretary of State is not required to grant a residence permit to—

- (a) a worker whose employment in the United Kingdom is limited to three months and who holds a document from his employer certifying that his employment is so limited;



- (b) a worker who is employed in the United Kingdom but who resides in the territory of an EEA State and who returns to his residence at least once a week;
- (c) a seasonal worker whose contract of employment has been approved by the Department for Education and Employment; or
- (d) a provider or recipient of services if the services are to be provided for no more than three months.

(2) The requirement in paragraph (1)(a) to hold a document does not apply to workers coming within the provisions of Council Directive [64/224/EEC](#) of 25 February 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries<sup>(13)</sup>.

### **Form of residence permit and residence document**

**17.**—(1) The residence permit issued to a worker or a worker’s family member who is an EEA national must be in the following form:

“Residence Permit for a National of an EEA State

This permit is issued pursuant to Regulation ([EEC](#)) No 1612/68 of the Council of the European Communities of 15 October 1968<sup>(14)</sup> and to the measures taken in implementation of the Council Directive of 15 October 1968<sup>(15)</sup>.

In accordance with the provisions of the above-mentioned Regulation, the holder of this permit has the right to take up and pursue an activity as an employed person in the territory of the United Kingdom under the same conditions as United Kingdom national workers.”

(2) A residence document issued to a family member who is not an EEA national may take the form of a stamp in that person’s passport.

### **Duration of residence permit**

**18.**—(1) Subject to the following paragraphs and to regulations 20 and 22(2), a residence permit must be valid for at least five years from the date of issue.

(2) In the case of a worker who is to be employed in the United Kingdom for less than twelve but more than three months, the validity of the residence permit may be limited to the duration of the employment.

(3) In the case of a seasonal worker who is to be employed for more than three months, the validity of the residence permit may be limited to the duration of the employment if the duration is indicated in the document confirming the worker’s engagement or in a certificate of employment.

(4) In the case of a provider or recipient of services, the validity of the residence permit may be limited to the period during which the services are to be provided.

(5) In the case of a student, the residence permit is to be valid for a period which does not exceed the duration of the course of study; but where the course lasts for more than one year the validity of the residence permit may be limited to one year.

(6) In the case of a retired person or a self-sufficient person, the Secretary of State may, if he deems it necessary, require the revalidation of the residence permit at the end of the first two years of residence.

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<sup>(13)</sup> OJ No. 56, 4.4.64, p. 869 (OJ/SE 1st series 1963-64, p. 126).

<sup>(14)</sup> OJ No. L 257, 19.10.68, p.2 (OJ/SE 1st series 1968, vol. II, p. 475).

<sup>(15)</sup> Council Directive [68/360/EEC](#); OJ L 257, 19.10.68, p. 13 (OJ/SE 1st series 1968, vol. II, p. 485).

(7) The validity of a residence permit is not to be affected by absence from the United Kingdom for periods of no more than six consecutive months or absence from the United Kingdom on military service.

### **Renewal of residence permit**

**19.**—(1) Subject to paragraphs (2) and (3) and to regulations 20 and 22(2), a residence permit must be renewed on application.

(2) On the occasion of the first renewal of a worker's residence permit the validity may be limited to one year if the worker has been involuntarily unemployed in the United Kingdom for more than one year.

(3) In the case of a student whose first residence permit is limited to one year by virtue of regulation 18(5), renewal may be for periods limited to one year.

### **Duration and renewal of residence permit or residence document granted to a family member**

**20.** The family member of an EEA national is entitled to a residence permit or residence document of the same duration as the residence permit granted to the qualified person of whose family he is a member; and the family member's residence permit or residence document is subject to the same terms as to renewal.

## **Part V**

### **Withdrawal of EEA Rights**

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

**21.**—(1) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 12 if his exclusion is justified on grounds of public policy, public security or public health.

(2) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 12(2) if, at the time of his arrival, he is not the family member of a qualified person.

(3) A person may be removed from the United Kingdom—

(a) if he is not, or has ceased to be—

(i) a qualified person; or

(ii) the family member of a qualified person;

(b) if he is a qualified person or the family member of such a person, but the Secretary of State has decided that his removal is justified on the grounds of public policy, public security or public health.

#### **Refusal to issue or renew residence permit or residence document, and revocation of residence permit, residence document or EEA family permit**

**22.**—(1) The Secretary of State may refuse to issue a residence permit or residence document (as the case may be) if the refusal is justified on grounds of public policy, public security or public health.

(2) The Secretary of State may revoke, or refuse to renew, a residence permit or residence document if—

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

- (b) the person to whom the residence permit or residence document was issued—
  - (i) is not, or has ceased to be, a qualified person;
  - (ii) is not, or has ceased to be, the family member of a qualified person.
- (3) An immigration officer may, at the time of the arrival in the United Kingdom of a person who is not an EEA national, revoke that person's residence document if he is not at that time the family member of a qualified person.
- (4) An immigration officer may, at the time of a person's arrival in the United Kingdom, revoke that 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 a qualified person.

### **Public policy, public security and public health**

**23.** Decisions taken on grounds of public policy, public security or public health ("the relevant grounds") must be taken in accordance with the following principles—

- (a) the relevant grounds must not be invoked to secure economic ends;
- (b) a decision taken on one or more of the relevant grounds must be based exclusively on the personal conduct of the individual in respect of whom the decision is taken;
- (c) a person's previous criminal convictions do not, in themselves, justify a decision on grounds of public policy or public security;
- (d) a decision to refuse admission to the United Kingdom, or to refuse to grant the first residence permit or residence document, to a person on the grounds that he has a disease or disability may be justified only if the disease or disability is of a type specified in Schedule 1 to these Regulations;
- (e) a disease or disability contracted after a person has been granted a first residence permit or first residence document does not justify a decision to refuse to renew the permit or document or a decision to remove him;
- (f) a person is to be informed of the grounds of public policy, public security or public health upon which the decision taken in his case is based unless it would be contrary to the interests of national security to do so.

## **Part VI**

### **Application of the 1971 Act and the 1999 Act**

#### **Persons claiming right of admission**

**24.—(1)** This regulation applies to a person who claims a right of admission to the United Kingdom under regulation 12 as—

- (a) the family member of an EEA national, where he is not himself an EEA national; or
- (b) an EEA national, where there is reason to believe that he may fall to be excluded from the United Kingdom on grounds of public policy, public security or public health.

(2) A person to whom this regulation applies is to be treated as if he were a person seeking leave to enter the United Kingdom under the 1971 Act and paragraphs 2 to 4, 7, 16 to 18 and 21

to 24 of Schedule 2 to the 1971 Act (administrative provisions as to control on entry etc)(16) apply accordingly, 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 he is a person who is to be granted admission under these Regulations; and
- (b) the references in paragraph 4(2A) and in paragraph 7 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.

(3) For so long as a person to whom this regulation applies is detained, or temporarily admitted or released while liable to detention, under the powers conferred by Schedule 2 to the 1971 Act, he is deemed not to have been admitted to the United Kingdom.

### **Persons refused admission**

**25.**—(1) This regulation applies to a person who is in the United Kingdom and has been refused admission to the United Kingdom—

- (a) because he does not meet the requirements of regulation 12 (including where he does not meet those requirements because his residence document or EEA family permit has been revoked by an immigration officer in accordance with regulation 22); or
- (b) in accordance with regulation 21(1) or (2).

(2) A person to whom this regulation applies is to be treated as if he were a person refused leave to enter under the 1971 Act, and the provisions set out in paragraph (3) apply accordingly.

(3) Those provisions are—

- (a) paragraphs 8, 10, 11, 16 to 18 and 21 to 24 of Schedule 2 to the 1971 Act;
- (b) paragraph 19 of Schedule 2 to the 1971 Act, except that the reference in that paragraph to a certificate of entitlement, entry clearance or work permit is to be read as a reference to an EEA family permit or residence document; and
- (c) sections 67 and 68 of the 1999 Act (appeal concerning objection to removal destination), except that the reference in section 68(1)(b) to a person who held a current entry clearance or was a person named in a current work permit is to be read as a reference to a person who held an EEA family permit or residence document.

### **Persons subject to removal**

**26.**—(1) This regulation applies to a person whom it has been decided to remove from the United Kingdom in accordance with regulation 21(3).

(2) Where the decision is under sub-paragraph (a) of regulation 21(3), the person is to be treated as if he were a person to whom section 10(1)(a) of the 1999 Act applied, and section 10 of that Act (removal of certain persons unlawfully in the United Kingdom) is to apply accordingly.

(3) Where the decision is under sub-paragraph (b) of regulation 21(3), the person is to be treated as if he were a person to whom section 3(5)(a) of the 1971 Act (liability to deportation) applied, and section 5 of that Act (procedure for deportation) and Schedule 3 to that Act (supplementary provisions as to deportation) are to apply accordingly.

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(16) Schedule 2 has been amended, inter alia, by the Criminal Justice Act 1972 (c. 71); the Justices of the Peace Act 1979 (c. 55); the British Nationality Act 1981 (c. 61); the Police and Criminal Evidence Act 1984 (c. 60); the Immigration Act 1988 (c. 14); the Asylum and Immigration Act 1996 (c. 49); and the 1999 Act.

## Part VII

### Appeals

#### Interpretation of Part VII

**27.**—(1) In this Part—

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997<sup>(17)</sup>;

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

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

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

(a) removal from the United Kingdom;

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

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

(3) For the purposes of this Part, a decision-maker acts in breach of a person's human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by section 6(1) of the Human Rights Act 1998<sup>(18)</sup>.

#### Scope of Part VII

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

#### Appeal rights

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

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

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

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

#### Out-of-country appeals

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

(a) to refuse to admit him to the United Kingdom;

(b) to refuse to revoke a deportation order made against him;

(c) to refuse to issue him with an EEA family permit.

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<sup>(17)</sup> 1997 c. 68.

<sup>(18)</sup> 1998 c. 42.

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

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

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

### **Appeals to the Commission**

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

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

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

(4) This paragraph applies if—

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

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

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

### **Amendments to the 1997 Act**

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

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

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

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

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

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

(3) In section 2A (jurisdiction: human rights<sup>(19)</sup>), after subsection (6) insert—

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<sup>(19)</sup> Subsections (1) to (6) of section 2A were inserted by paragraph 121 of Schedule 14 to the 1999 Act.

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

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

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

(4) Schedule 14 to the 1999 Act (consequential amendments)(20) is amended as follows—

- (a) paragraph 119 is repealed;
- (b) paragraph 121 is repealed in so far as it relates to the insertion of subsections (7) and (8) of section 2A in the 1997 Act.

### **Proof of family membership**

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

- (a) an EEA family permit; or
- (b) other proof that he is related as claimed to that other person.

### **Effects of appeals to the adjudicator**

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

(2) If a person appeals under regulation 29 against an EEA decision to remove him from the United Kingdom, any directions given under section 10 of the 1999 Act or Schedule 3 of the 1971 Act(21) for his removal from the United Kingdom are to have no effect, except in so far as they have already been carried out, while the appeal is pending.

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

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

- (a) the giving of directions under that paragraph for the removal of a person from the United Kingdom, and
- (b) the giving of a notice of intention to give such directions,

any period during which there is pending an appeal by him under regulation 29 is to be disregarded.

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

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

(5) If a person appeals under regulation 29 against an EEA decision to remove him from the United Kingdom, a deportation order is not to be made against him under section 5 of the 1971 Act<sup>(22)</sup> while the appeal is pending.

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

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

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

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

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

#### **Transitional provisions (EEA decisions)**

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

(2) Notwithstanding the revocation of the Immigration (European Economic Area) Order 1994<sup>(23)</sup> by regulation 1(2)—

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

#### **Transitional provisions (the 1997 Act)**

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

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

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

- (a) who applied during the regularisation period fixed by section 9 of the 1999 Act, in accordance with the Immigration (Regularisation Period for Overstayers) Regulations 2000<sup>(24)</sup>, for leave to remain in the United Kingdom; and
- (b) on whom the Secretary of State has since served a notice of his decision to make a deportation order.

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<sup>(22)</sup> Section 5 has been amended by the British Nationality Act 1981 (c. 61); the Immigration Act 1988 (c. 14); and the Asylum and Immigration Act 1996 (c. 49).

<sup>(23)</sup> S.I. 1994/1895, amended by S.I. 1997/2981.

<sup>(24)</sup> S.I. 2000/265.



(4) In the case of an appeal in respect of which section 2(1)(b) of the 1997 Act (appeals against variation of limited leave or refusal to vary it) continues to have effect in accordance with paragraph (2), section 7A(7) of the 1997 Act (pending appeals)<sup>(25)</sup> applies as if the reference to section 62(3) of the 1999 Act were a reference to section 14(3) of the 1971 Act.

(5) In the case of an appeal in respect of which section 2(1) of the 1997 Act continues to have effect in accordance with paragraph (2) or (3), Schedule 2 of the 1997 Act (supplementary provisions as to appeals) has effect without the amendments made by the 1999 Act<sup>(26)</sup>.

Home Office  
30th August 2000

*Mike O'Brien*  
Parliamentary Under-Secretary of State

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<sup>(25)</sup> Section 7A was inserted by paragraph 124 of Schedule 14 to the 1999 Act.

<sup>(26)</sup> See paragraphs 126 and 127 of Schedule 14 to the 1999 Act.

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## SCHEDULE 1

Regulation 23(d)

### Specified Diseases and Disabilities

1. The following diseases may justify a decision taken on grounds of public health—
  - (a) diseases subject to quarantine listed in International Health Regulation No. 2 of the World Health Organisation of 25th May 1951;
  - (b) tuberculosis of the respiratory system in an active state or showing a tendency to develop;
  - (c) syphilis;
  - (d) other infectious diseases or contagious parasitic diseases, if they are the subject of provisions for the protection of public health in the United Kingdom.
2. The following diseases or disabilities may justify a decision taken on grounds of public policy or public security—
  - (a) drug addiction;
  - (b) profound mental disturbance; manifest conditions of psychotic disturbance with agitation, delirium, hallucinations or confusion.

## SCHEDULE 2

Regulation 29(4)

### Appeals to the Adjudicator

1. In this Schedule, unless the context otherwise requires, a reference to a paragraph is a reference to a paragraph of Schedule 4 to the 1999 Act.
2. Subject to paragraph 3 of this Schedule—
  - paragraphs 1 to 9;
  - paragraphs 21 to 23; and
  - paragraph 24(2)have effect in relation to appeals to the adjudicator under these Regulations.
- 3.—(1) In paragraph 6(1)(a), for the words “certificate of entitlement, entry clearance or work permit” substitute “EEA family permit, residence document or residence permit”.
  - (2) For paragraph 7, substitute—

“7. If, under the rules, leave to appeal to the Tribunal is required in cases in which an adjudicator dismisses an appeal in respect of an EEA decision which concerns a person’s entitlement to be admitted to the United Kingdom, the authority having power to grant leave must grant it if the authority is satisfied that, at the time of the decision, the appellant held an EEA family permit.”.
  - (3) Paragraph 9 has effect only to the extent that it relates to a claim under the Human Rights Convention.
  - (4) In paragraph 24(2), for the words “entry clearance” substitute “EEA family permit”, and after the words “deportation order” insert “made on grounds of public policy, public security or public health”.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations re-enact, with amendments, the provisions of the Immigration (European Economic Area) Order 1994 (“the EEA Order”). In addition, the Regulations create free-standing rights of appeal which (in contrast to the position under the EEA Order) are no longer dependent upon rights of appeal arising under the statutory provisions which apply to persons not claiming rights under European Community law. Those new appeal rights are set out in Part VII (regulations 27 to 36) of the Regulations. The Regulations also make certain other additions to the rules contained in the EEA Order.

2. In conjunction with the directly applicable rights arising under Commission Regulation 1251/70 (see paragraph 5 below), the Regulations provide a comprehensive scheme whereby Community nationals and their family members can assert rights of entry into, or residence in, the United Kingdom. The Regulations implement the Directives set out in paragraph 4 below. By virtue of the European Economic Area Agreement, rights under these Directives also extend to nationals of other States which are parties to that Agreement (namely Iceland, Liechtenstein and Norway).

3. The changes of substance to the rules contained in the EEA Order are as follows:

Regulation 8 provides that, for the purposes of the Immigration Act 1971 and the British Nationality Act 1981, certain persons are to be regarded as being in the United Kingdom without being subject under the immigration laws to any restriction on the period for which they may remain. These are persons who have rights to remain under Regulation 1251/70 and under Directive [75/34/EEC](#), together with those EEA nationals and family members who have been granted permission to remain under domestic immigration law.

Regulation 10 provides a power to treat certain extended-family members as “family members” for the purposes of exercising rights under the Regulations. This regulation implements Article 10(2) of Council Regulation [\(EEC\) No. 1612/68](#) on freedom of movement for workers within the Community (as applied by Article 1 of Directive [68/360/EEC](#)), and Article 1(2) of Directive [73/148/EEC](#).

Regulation 11 implements the judgment of the European Court of Justice in Case C-370/90 *R v Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department* [1992] ECR I-4265, by extending Community rights (in certain circumstances) to family members of a United Kingdom national.

Regulation 13 makes provision for the grant of an EEA family permit to family members. This provision was previously to be found in the Immigration Rules.

Regulation 22(3) enables an immigration officer to revoke the residence document held by a family member who is not an EEA national, when the latter arrives in the United Kingdom, if he is not at that time the family member of a qualified person. Regulation 22(4) enables an immigration officer to revoke an EEA family permit on those grounds, and on grounds of public policy, public security or public health.

Regulations 24 to 26 set out, in more detail than previously, how certain provisions of the 1971 Act are to be applied in the case of those whose rights are under scrutiny or have been refused.

Regulation 29 provides for a right to appeal against a decision taken under the Regulations or under Regulation 1251/70, where the decision concerns removal or admission, or the issue, renewal or revocation of residence permits or documents. A person who claims rights as a

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family member must provide the documents required by regulation 33, and a person who claims to be an EEA national must provide the documents required by section 80(12) of the Immigration and Asylum Act 1999 (“the 1999 Act”). Regulation 29(4) applies (with modifications) the provisions of Parts I and III of Schedule 4 to the 1999 Act, to appeals to the adjudicator under these Regulations.

Regulation 30 sets out the circumstances in which an appeal against a decision concerning admission may only be made from outside the United Kingdom.

Regulation 31 sets out the circumstances in which an appeal must be made to the Special Immigration Appeals Commission, and regulation 32 makes consequential amendments to the Special Immigration Appeals Commission Act 1997 (“the 1997 Act”).

Regulation 34 adapts certain provisions of Part II of Schedule 4 to the 1999 Act (in particular, those providing for the stay of removal directions while an appeal is pending) to appeals to the adjudicator under these Regulations.

Regulation 35 provides that the new appeals provisions are to have effect only in relation to decisions taken on or after 2nd October 2000, and contains transitional provisions regarding the EEA Order.

Regulation 36 provides that the amendments made by regulation 32 have effect only in relation to decisions taken on or after 2nd October 2000, and contains transitional provisions regarding the 1997 Act.

**4.** These Regulations implement the following European Community Directives:

(1) Council Directive [64/221/EEC](#), on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.

(2) Council Directive [68/360/EEC](#), on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

(3) Council Directive [72/194/EEC](#), extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of Directive [64/221/EEC](#).

(4) Council Directive [73/148/EEC](#), on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services.

(5) Council Directive [75/34/EEC](#), concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity.

(6) Council Directive [75/35/EEC](#), extending the scope of Directive [64/211/EEC](#) to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity.

(7) Council Directive [90/364/EEC](#), on the right of residence.

(8) Council Directive [90/365/EEC](#), on the right of residence for employees and self-employed persons who have ceased their occupational activity.

(9) Council Directive [93/96/EEC](#), on the right of residence for students.

**5.** The rights given by these Regulations are supplemented by the directly applicable rights which arise under Commission Regulation (EEC) No. [1251/70](#), on the right of workers to remain in the territory of a Member State after having been employed in that State.