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STATUTORY INSTRUMENTS

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**2006 No. 1003**

**IMMIGRATION**

**The Immigration (European Economic Area) Regulations 2006**

<i>Made</i>	- - - -	<i>30th March 2006</i>
<i>Laid before Parliament</i>		<i>4th April 2006</i>
<i>Coming into force</i>	- -	<i>30th April 2006</i>

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 upon him by that section, and of the powers conferred on him by section 109 of the Nationality, Immigration and Asylum Act 2002<sup>(3)</sup>, makes the following Regulations:

**PART 1**

**INTERPRETATION ETC**

**Citation and commencement**

1. These Regulations may be cited as the Immigration (European Economic Area) Regulations 2006 and shall come into force on 30<sup>th</sup> April 2006.

**General interpretation**

2.—(1) In these Regulations—

“the 1971 Act” means the Immigration Act 1971<sup>(4)</sup>;

“the 1999 Act” means the Immigration and Asylum Act 1999<sup>(5)</sup>;

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

“civil partner”<sup>(6)</sup> does not include a party to a civil partnership of convenience;

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(1) S.I. 2000/1813.

(2) 1972 c. 68.

(3) 2002 c. 41.

(4) 1971 c. 77.

(5) 1999 c. 33.

(6) Civil partner has the meaning given by Schedule 1 to the Interpretation Act 1978 (c. 30) as amended by paragraph 59 of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

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

“document certifying permanent residence” means a document issued to an EEA national, in accordance with regulation 18, as proof of the holder’s permanent right of residence under regulation 15 as at the date of issue;

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

- (a) entitlement to be admitted to the United Kingdom;
- (b) entitlement to be issued with or have renewed, or not to have revoked, a registration certificate, residence card, document certifying permanent residence or permanent residence card; or
- (c) removal from the United Kingdom;

“EEA family permit” means a document issued to a person, in accordance with regulation 12, in connection with his admission to the United Kingdom;

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

“EEA State” means—

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

“entry clearance” has the meaning given in section 33(1) of the 1971 Act<sup>(7)</sup>;

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

“immigration rules” has the meaning given in section 33(1) of the 1971 Act;

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

“permanent residence card” means a card issued to a person who is not an EEA national, in accordance with regulation 18, as proof of the holder’s permanent right of residence under regulation 15 as at the date of issue;

“registration certificate” means a certificate issued to an EEA national, in accordance with regulation 16, as proof of the holder’s right of residence in the United Kingdom as at the date of issue;

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

“residence card” means a card issued to a person who is not an EEA national, in accordance with regulation 17, as proof of the holder’s right of residence in the United Kingdom as at the date of issue;

“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.

(2) Paragraph (1) is subject to paragraph 1(a) of Schedule 4 (transitional provisions).

### **Continuity of residence**

**3.—**(1) This regulation applies for the purpose of calculating periods of continuous residence in the United Kingdom under regulation 5(1) and regulation 15.

(2) Continuity of residence is not affected by —

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(7) Section 33(1) is amended by paragraph 5 of the Schedule to the Immigration Act 1988 (c. 14).

- (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 military service; or
- (c) any 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) But continuity of residence is broken if a person is removed from the United Kingdom under regulation 19(3).

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

4.—(1) In these Regulations —

- (a) “worker” means a worker within the meaning of Article 39 of the Treaty establishing the European Community<sup>(8)</sup>;
- (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 Treaty establishing the European Community;
- (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 his period of residence; and
  - (ii) comprehensive sickness insurance cover in the United Kingdom;
- (d) “student” means a person who—
  - (i) is enrolled at a private or public establishment, included on the Department for Education and Skills' Register of Education and Training Providers<sup>(9)</sup> or financed from public funds, for the principal purpose of following a course of study, including vocational training;
  - (ii) has comprehensive sickness insurance cover in the United Kingdom; and
  - (iii) assures the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence.

(2) For the purposes of paragraph (1)(c), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person—

- (a) the requirement for that person to have sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden;
- (b) the requirement for that person to have comprehensive sickness insurance cover in the United Kingdom shall only be satisfied if he and his family members have such cover.

(3) For the purposes of paragraph (1)(d), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person, the requirement for that person to assure the Secretary of State that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of

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<sup>(8)</sup> OJ No. C325, 24.12.02, p. 51.

<sup>(9)</sup> The Register of Education and Training Providers is maintained by, and is available on the website of, the Department for Education and Skills.

residence shall only be satisfied if he assures the Secretary of State that his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden.

(4) For the purposes of paragraphs (1)(c) and (d) and paragraphs (2) and (3), the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if they exceed the maximum level of resources which a United Kingdom national and his family members may possess if he is to become eligible for social assistance under the United Kingdom benefit system.

**“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 the conditions in paragraph (2), (3), (4) or (5).

- (2) A person satisfies the conditions in this paragraph if he—
- (a) terminates his activity as a worker or self-employed person and—
    - (i) has reached the age at which he is entitled to a state pension on the date on which he terminates his activity; or
    - (ii) in the case of a worker, ceases working to take early retirement;
  - (b) pursued his activity as a worker or self-employed person in the United Kingdom for at least twelve months prior to the termination; and
  - (c) resided in the United Kingdom continuously for more than three years prior to the termination.
- (3) A person satisfies the conditions in this paragraph if—
- (a) he terminates his activity in the United Kingdom as a worker or self-employed person as a result of a permanent incapacity to work; and
  - (b) either—
    - (i) he resided in the United Kingdom continuously for more than two years prior to the termination; or
    - (ii) the incapacity is the result of an accident at work or an occupational disease that entitles him to a pension payable in full or in part by an institution in the United Kingdom.
- (4) A person satisfies the conditions in this paragraph if—
- (a) he is active as a worker or self-employed person in an EEA State but retains his place of residence in the United Kingdom, to which he returns as a rule at least once a week; and
  - (b) prior to becoming so active in that EEA State, he 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 satisfies the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) shall, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the United Kingdom during any period in which he 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 shall not apply in relation to a person whose spouse or civil partner is a United Kingdom national.
- (7) For the purposes of this regulation—
- (a) periods of inactivity for reasons not of the person’s own making;
  - (b) periods of inactivity due to illness or accident; and

(c) in the case of a worker, periods of involuntary unemployment duly recorded by the relevant employment office,  
shall 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, “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.

(2) A person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—

- (a) he is temporarily unable to work as the result of an illness or accident;
- (b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom, provided that he has registered as a jobseeker with the relevant employment office and—
  - (i) he was employed for one year or more before becoming unemployed;
  - (ii) he has been unemployed for no more than six months; or
  - (iii) he can provide evidence that he is seeking employment in the United Kingdom and has a genuine chance of being engaged;
- (c) he is involuntarily unemployed and has embarked on vocational training; or
- (d) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.

(3) A person who is no longer in self-employment shall not cease to be treated as a self-employed person for the purpose of paragraph (1)(c) if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident.

(4) For the purpose of paragraph (1)(a), “jobseeker” means a person who enters the United Kingdom in order to seek employment and can provide evidence that he is seeking employment and has a genuine chance of being engaged.

**Family member**

7.—(1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person—

- (a) his spouse or his civil partner;
- (b) direct descendants of his, his spouse or his civil partner who are—
  - (i) under 21; or
  - (ii) dependants of his, his spouse or his civil partner;
- (c) dependent direct relatives in his ascending line or that of his spouse or his civil partner;
- (d) a person who is to be treated as the family member of that other person under paragraph (3).

(2) A person shall not be treated under paragraph (1)(b) or (c) as the family member of a student residing in the United Kingdom after the period of three months beginning on the date on which the student is admitted to the United Kingdom unless—

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

(3) Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.

(4) Where the relevant EEA national is a student, the extended family member shall only be treated as the family member of that national under paragraph (3) if either the EEA family permit was issued under regulation 12(2), the registration certificate was issued under regulation 16(5) or the residence card was issued under regulation 17(4).

#### **“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 the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and—

- (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
- (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
- (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.

(3) A person satisfies the condition in this paragraph if the person is a relative of an EEA national or his spouse or his civil partner and, on serious health grounds, strictly requires the personal care of the EEA national his spouse or his civil partner.

(4) A person satisfies the condition in this paragraph if 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 were the EEA national a person present and settled in the United Kingdom.

(5) A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national.

(6) In these Regulations “relevant EEA national” means, in relation to an extended family member, the EEA national who is or whose spouse or civil partner is the relative of the extended family member for the purpose of paragraph (2), (3) or (4) or the EEA national who is the partner of the extended family member for the purpose of paragraph (5).

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

**9.**—(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 as if the United Kingdom national were an EEA national.

(2) The conditions are that—

- (a) the United Kingdom national is residing in an EEA State as a worker or self-employed person or was so residing before returning to the United Kingdom; and
- (b) if the family member of the United Kingdom national is his spouse or civil partner, the parties are living together in the EEA State or had entered into the marriage or civil partnership and were living together in that State before the United Kingdom national returned to the United Kingdom.

(3) Where these Regulations apply to the family member of a United Kingdom national the United Kingdom national shall be treated as holding a valid passport issued by an EEA State for the purpose of the application of regulation 13 to that family member.

### **“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 paragraph (8), a person who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the conditions in this paragraph if—

- (a) he was a family member of a qualified person when the qualified person died;
- (b) he resided in the United Kingdom in accordance with these Regulations for at least the year immediately before the death of the qualified person; and
- (c) he satisfies the condition in paragraph (6).

(3) A person satisfies the conditions in this paragraph if—

- (a) he is the direct descendant of—
  - (i) a qualified person who has died;
  - (ii) a person who ceased to be a qualified person on ceasing to reside in the United Kingdom; or
  - (iii) the person who was the spouse or civil partner of the qualified person mentioned in sub-paragraph (i) when he died or is the spouse or civil partner of the person mentioned in sub-paragraph (ii); and
- (b) he was attending an educational course in the United Kingdom immediately before the qualified person died or ceased to be a qualified person and continues to attend such a course.

(4) A person satisfies the conditions in this paragraph if the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).

(5) A person satisfies the conditions in this paragraph if—

- (a) he ceased to be a family member of a qualified person on the termination of the marriage or civil partnership of the qualified person;
- (b) he was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
- (c) he 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 has custody of a child of the qualified person;
  - (iii) the former spouse or civil partner of the qualified person has the right of access to a child of the qualified person under the age of 18 and 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 the person is warranted by particularly difficult circumstances, such as he or another family member having been a victim of domestic violence while 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 he 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 12 of Council Regulation (EEC) No. 1612/68 on freedom of movement for workers<sup>(10)</sup>.
- (8) A person with a permanent right of residence under regulation 15 shall not become a family member who has retained the right of residence on the death or departure from the United Kingdom of the qualified person or the termination of the marriage or civil partnership, as the case may be, and a family member who has retained the right of residence shall cease to have that status on acquiring a permanent right of 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 if he produces on arrival 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 he is a family member of an EEA national, a family member who has retained the right of residence or a person with a permanent right of residence under regulation 15 and produces on arrival—

- (a) a valid passport; and
- (b) an EEA family permit, a residence card or a permanent residence card.

(3) An immigration officer may 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 or permanent 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 give the person every reasonable opportunity to obtain the

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<sup>(10)</sup> OJ No. L 257, 19.10.68, p. 2 (OJ/SE 1<sup>st</sup> series 1968, vol II, p. 475).



document or have it brought to him within a reasonable period of time or to prove by other means that he is—

- (a) an EEA national;
  - (b) a family member of an EEA national with a right to accompany that national or join him in the United Kingdom; or
  - (c) a family member who has retained the right of residence or a person with a permanent right of residence under regulation 15.
- (5) But this regulation is subject to regulations 19(1) and (2).

### **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 UK 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 him there and—
  - (i) is lawfully resident in an EEA State; or
  - (ii) would meet the requirements in the immigration rules (other than those relating to entry clearance) for leave to enter the United Kingdom as the family member of the EEA national or, in the case of direct descendants or dependent direct relatives in the ascending line of his spouse or his civil partner, as the family member of his spouse or his civil partner, were the EEA national or the spouse or civil partner a person present and settled in the United Kingdom.

(2) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national who applies for one if—

- (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
- (b) the extended family member wishes to accompany the relevant EEA national to the United Kingdom or to join him there; and
- (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.

(3) Where an entry clearance officer receives an application under paragraph (2) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.

(4) An EEA family permit issued under this regulation shall be issued free of charge and as soon as possible.

(5) But an EEA family permit shall not be issued under this regulation if the applicant or the EEA national concerned falls to be excluded from the United Kingdom on grounds of public policy, public security or public health in accordance with regulation 21.

**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 on which he is admitted to the United Kingdom provided that he holds a valid national identity card or passport issued by an EEA State.

(2) A family member of an EEA national residing in the United Kingdom under paragraph (1) who is not himself an EEA national is entitled to reside in the United Kingdom provided that he holds a valid passport.

(3) But—

- (a) this regulation is subject to regulation 19(3)(b); and
- (b) an EEA national or his family member who becomes an unreasonable burden on the social assistance system of the United Kingdom shall cease to have the right to reside under this regulation.

**Extended right of residence**

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

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

(4) A right to reside under this regulation is in addition to any right a person may have to reside in the United Kingdom under regulation 13 or 15.

(5) But this regulation is subject to regulation 19(3)(b).

**Permanent right of residence**

15.—(1) The following persons shall 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 himself 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;
- (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 him immediately before his death; and
  - (iii) the worker or self-employed person had resided continuously in the United Kingdom for at least the two years immediately before his death 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 that period, a family member who has retained the right of residence.

(2) Once acquired, the right of permanent residence under this regulation shall be lost only through absence from the United Kingdom for a period exceeding two consecutive years.

(3) But this regulation is subject to regulation 19(3)(b).

## PART 3

### RESIDENCE DOCUMENTATION

#### **Issue of registration certificate**

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

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

(2) 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).

(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 permanent right of residence under regulation 15 immediately on application and production of—

- (a) a valid 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 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 relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under regulation 15; and
- (b) 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) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.

(7) A registration certificate issued under this regulation shall state the name and address of the person registering and the date of registration and shall be issued free of charge.

(8) But this regulation is subject to regulation 20(1).

#### **Issue of residence card**

**17.**—(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 permanent right of 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 shall immediately issue the applicant with a certificate of application for the residence card and the residence card shall 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 relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under regulation 15; and
  - (b) 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) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.
- (6) A residence card issued under this regulation may take the form of a stamp in the applicant's passport and shall be entitled "Residence card of a family member of an EEA national" and be 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 issued under this regulation shall be issued free of charge.
- (8) But this regulation is subject to regulation 20(1).

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

- 18.**—(1) The Secretary of State must issue an EEA national with a permanent right of residence under regulation 15 with a document certifying permanent residence as soon as possible after an application for such a document and proof that the EEA national has such a right is submitted to the Secretary of State.
- (2) The Secretary of State must issue a person who is not an EEA national who has a permanent right of residence under regulation 15 with a permanent residence card no later than six months after the date on which an application for a permanent residence card and proof that the person has such a right is submitted to the Secretary of State.
- (3) Subject to paragraph (5) and regulation 20(3), a permanent residence card shall be 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 shall be issued free of charge.
- (5) A document certifying permanent residence and a permanent residence card shall cease to be valid if the holder ceases to have a right of permanent residence under regulation 15.

## PART 4

### REFUSAL OF ADMISSION AND REMOVAL ETC

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

**19.**—(1) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if his exclusion is justified on grounds of public policy, public security or public health in accordance with regulation 21.

(2) 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 his arrival—

- (a) he is accompanying the EEA national or joining him in the United Kingdom; and
- (b) the EEA national has a right to reside in the United Kingdom under these Regulations.

(3) Subject to paragraphs (4) and (5), a person who has been admitted to, or acquired a right to reside in, the United Kingdom under these Regulations may be removed from the United Kingdom if—

- (a) he does not have or ceases to have a right to reside under these Regulations; or
- (b) he would otherwise be entitled to reside in the United Kingdom under these Regulations but the Secretary of State has decided that his removal is justified on the grounds of public policy, public security or public health in accordance with regulation 21.

(4) A person must not be removed under paragraph (3) as the automatic consequence of having recourse to the social assistance system of the United Kingdom.

(5) A person must not be removed under paragraph (3) if he has a right to remain in the United Kingdom by virtue of leave granted under the 1971 Act unless his removal is justified on the grounds of public policy, public security or public health in accordance with regulation 21.

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

**20.**—(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.

(2) The Secretary of State may revoke a registration certificate or a residence card or refuse to renew a residence card if the holder of the certificate or card has ceased to have a right to reside under these Regulations.

(3) The Secretary of State may revoke a document certifying permanent residence or a permanent residence card or refuse to renew a permanent residence card if the holder of the certificate or card has ceased to have a right of permanent residence under regulation 15.

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

- (a) revoke that person's residence card if he 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 the right of residence or a person with a right of permanent residence under regulation 15;
- (b) revoke that person's permanent residence card if he is not at that time a person with 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, 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 an EEA national with the right to reside in the United Kingdom under these Regulations or is not accompanying that national or joining him in the United Kingdom.
- (6) Any action taken under this regulation on grounds of public policy, public security or public health shall be in accordance with regulation 21.

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

**21.**—(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 permanent right of residence under regulation 15 except on serious grounds of public policy or 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 necessary in his best interests, 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>(11)</sup>.

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, 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 concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- (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.

(6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person 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 the person, the person’s length of residence in the United Kingdom, the person’s social and cultural integration into the United Kingdom and the extent of the person’s links with his 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<sup>(12)</sup> or is not a disease to which section 38 of the Public Health (Control of Disease) Act 1984<sup>(13)</sup> applies (detention in hospital of a person with a notifiable disease) shall not constitute grounds for the decision; and
- (b) if the person concerned is in the United Kingdom, diseases occurring after the three month period beginning on the date on which he arrived in the United Kingdom shall not constitute grounds for the decision.

<sup>(11)</sup> Cmd 1976.

<sup>(12)</sup> The relevant instrument of the World Health Organisation for these purposes is currently the International Health Regulations (2005).

<sup>(13)</sup> 1984 c. 22; section 38 applies to a “notifiable disease”, as defined in section 10 of the Act and has been applied to an additional list of diseases by the Public Health (Infectious Diseases) Regulations S.I. 1988/1546.

## PART 5

### PROCEDURE IN RELATION TO EEA DECISIONS

#### Person claiming right of admission

**22.**—(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 is a family member of an EEA national, a family member who has retained the right of residence or a person with a permanent right of residence under regulation 15; 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 for the purposes of paragraphs 2, 3, 4, 7, 16 to 18 and 21 to 24 of Schedule 2 to the 1971 Act<sup>(14)</sup> (administrative provisions as to control on entry etc), 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;
- (b) the references in paragraphs 4(2A), 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 a 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 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.

#### Person refused admission

**23.**—(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 requirement of regulation 11 (including where he does not meet those requirements because his EEA family permit, residence card or permanent residence card has been revoked by an immigration officer in accordance with regulation 20); or
- (b) in accordance with regulation 19(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 for the purpose of paragraphs 8, 10, 10A, 11, 16 to 19 and 21 to 24 of Schedule 2 to the 1971 Act, except that the reference in paragraph 19 to a certificate of entitlement,

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<sup>(14)</sup> The relevant parts of Schedule 2 were amended by Schedule 6 to the Criminal Justice Act 1972 (c. 71), paragraphs 2 and 3 of Schedule 4 to the British Nationality Act 1981 (c. 61), paragraphs 6, 8, 9 and 10 of the Schedule to the Immigration Act 1988 (c. 14), paragraphs 5, 7, 10 and 11 of Schedule 2, and Schedule 4 to the Asylum and Immigration Act 1996 (c. 49), paragraph 70 of Schedule 13 to the Access to Justice Act 1999 (c. 22), section 140 of and paragraphs 43, 56, 58 to 63 of Schedule 14, and Schedule 16 to the 1999 Act, sections 63, 64 and 73 of and paragraphs 3 and 4 of Schedule 7 to the 2002 Act, paragraph 149 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 1 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), and S.I. 1993/1813.

entry clearance or work permit is to be read as a reference to an EEA family permit, residence card or a permanent residence card.

### **Person subject to removal**

**24.**—(1) This regulation applies to a person whom it has been decided to remove from the United Kingdom in accordance with regulation 19(3).

(2) Where the decision is under regulation 19(3)(a), the person is to be treated as if he were a person to whom section 10(1)(a) of the 1999 Act(15) 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 regulation 19(3)(b), the person is to be treated as if he were a person to whom section 3(5)(a) of the 1971 Act(16) (liability to deportation) applied, and section 5 of that Act(17) (procedure for deportation) and Schedule 3 to that Act(18) (supplementary provision as to deportation) are to apply accordingly.

(4) A person who enters or seeks to enter the United Kingdom in breach of a deportation order made against him pursuant to paragraph (3) shall be removable as an illegal entrant under Schedule 2 to the 1971 Act and the provisions of that Schedule shall apply accordingly.

(5) Where such a deportation order is made against a person but he 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 shall only take action to remove the person under the order after the end of that period if, having assessed whether there has been any material change in circumstances since the deportation order was made, he 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 shall be allowed one month to leave the United Kingdom, beginning on the date on which he is notified of the decision to remove him, before being removed pursuant to 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 a person is a person to whom regulation 24(4) applies.

## **PART 6**

### **APPEALS UNDER THESE REGULATIONS**

#### **Interpretation of Part 6**

**25.**—(1) In this Part—

“Asylum and Immigration Tribunal” has the same meaning as in the 2002 Act;

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(15) Section 10 is amended by sections 73 to 75 of and Schedule 9 to the 2002 Act.

(16) Section 3(5) is amended by paragraphs 43 and 44 of Schedule 14 to the 1999 Act.

(17) Section 5 is amended by paragraph 2 of Schedule 4 to the British Nationality Act 1981 (c. 61), paragraph 2 of the Schedule to the Immigration Act 1988 (c. 14), paragraph 2 of Schedule 2 to the Asylum and Immigration Act 1996 (c. 49) and paragraph 37 of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

(18) Schedule 3 is amended by paragraphs 1 and 2 of Schedule 10 to the Criminal Justice Act 1982 (c. 48), paragraph 10 of Schedule 10 to the Immigration Act 1988 (c. 14), paragraph 13 of Schedule 2 to the Asylum and Immigration Act 1996 (c. 49), section 54 of, and paragraphs 43 and 68 of Schedule 14 to, the 1999 Act, paragraphs 7 and 8 of Schedule 7 to the 2002 Act, paragraph 150 of Schedule 8, and Schedule 10, to the Courts Act 2003 (c. 39), and section 34 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19).



“Commission” has the same meaning as in the Special Immigration Appeals Commission Act 1997<sup>(19)</sup>;

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998<sup>(20)</sup>; and

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28<sup>th</sup> July 1951<sup>(21)</sup> and the Protocol relating to the Status of Refugees done at New York on 31st January 1967<sup>(22)</sup>.

(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**

**26.**—(1) Subject to the following paragraphs of this regulation, a person may appeal under these Regulations against an EEA decision.

(2) If a person claims to be an EEA national, he may not appeal under these Regulations unless he produces a valid national identity card or passport issued by an EEA State.

(3) If a person claims to be the family member or relative of an EEA national he may not appeal under these Regulations unless he produces—

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

(4) A person may not bring an appeal under these Regulations on a ground certified under paragraph (5) or rely on such a ground in an appeal brought under these Regulations.

(5) The Secretary of State or an immigration officer may certify a ground for the purposes of paragraph (4) if it has been considered in a previous appeal brought under these Regulations or under section 82(1) of the 2002 Act<sup>(23)</sup>.

(6) Except where an appeal lies to the Commission, an appeal under these Regulations lies to the Asylum and Immigration Tribunal.

(7) The provisions of or made under the 2002 Act referred to in Schedule 1 shall have effect for the purposes of an appeal under these Regulations to the Asylum and Immigration Tribunal in accordance with that Schedule.

### **Out of country appeals**

**27.**—(1) Subject to paragraphs (2) and (3), a person may not appeal under regulation 26 whilst 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;

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<sup>(19)</sup> 1997 c. 68.

<sup>(20)</sup> 1998 c. 42.

<sup>(21)</sup> Cmd 9171.

<sup>(22)</sup> Cmnd 3906.

<sup>(23)</sup> Section 82(1) is amended by section 26 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (c. 19).

- (c) to refuse to issue him with an EEA family permit; or
  - (d) to remove him from the United Kingdom after he has entered or sought to enter the United Kingdom in breach of a deportation order.
- (2) Paragraph (1)(a) does not apply where—
- (a) the person held an EEA family permit, a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card on his arrival in the United Kingdom or can otherwise prove that he is resident in the United Kingdom;
  - (b) the person is deemed not to have been admitted to the United Kingdom under regulation 22(3) but at the date on which notice of the decision to refuse to admit him is given he has been in the United Kingdom for at least 3 months;
  - (c) the person is in the United Kingdom and a ground of the appeal is that, in taking the decision, the decision maker acted in breach of his rights under the Human Rights Convention or the Refugee Convention, unless the Secretary of State certifies that that ground of appeal is clearly unfounded.
- (3) Paragraph (1)(d) does not apply where a ground of the appeal is that, in taking the decision, the decision maker acted in breach of the appellant's rights under the Human Rights Convention or the Refugee Convention, unless the Secretary of State certifies that that ground of appeal is clearly unfounded.

### **Appeals to the Commission**

**28.**—(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 grounds 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.
- (4) This paragraph applies if the Secretary of State certifies that the EEA decision was taken wholly or partly in reliance on information which in his opinion should 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) a reference to the Secretary of State is 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 Asylum and Immigration Tribunal the appeal shall lapse.
- (7) An appeal against an EEA decision lies to the Commission where an appeal lapses by virtue of paragraph (6).
- (8) The Special Immigration Appeals Commission Act 1997 shall apply to an appeal to the Commission under these Regulations as it applies to an appeal under section 2 of that Act to which subsection (2) of that section applies (appeals against an immigration decision) but paragraph (i) of that subsection shall not apply in relation to such an appeal.

### **Effect of appeals to the Asylum and Immigration Tribunal**

**29.**—(1) This Regulation applies to appeals under these Regulations made to the Asylum and Immigration Tribunal.

(2) If a person in the United Kingdom appeals against an EEA decision to refuse to admit him to the United Kingdom, any directions for his 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, and no directions may be so given while the appeal is pending.

(3) If a person in the United Kingdom appeals against an EEA decision to remove him from the United Kingdom, any directions given under section 10 of the 1999 Act or Schedule 3 to the 1971 Act 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.

(4) 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 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.

(5) 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 is to be disregarded.

(6) If a person in the United Kingdom appeals 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 while the appeal is pending.

(7) Paragraph 29 of Schedule 2 to the 1971 Act (grant of bail pending appeal) 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.

## **PART 7**

### **GENERAL**

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

**30.** Schedule 2 (effect on other legislation) shall have effect.

#### **Revocations, transitional provisions and consequential amendments**

**31.**—(1) The Regulations listed in column 1 of the table in Part 1 of Schedule 3 are revoked to the extent set out in column 3 of that table, subject to Part 2 of that Schedule and to Schedule 4.

(2) Schedule 4 (transitional provisions) and Schedule 5 (consequential amendments) shall have effect.

Home Office  
30th March 2006

*Tony McNulty*  
Minister of State

## SCHEDULE 1

Regulation 26(7)

### APPEALS TO THE ASYLUM AND IMMIGRATION TRIBUNAL

The following provisions of, or made under, the 2002 Act have effect in relation to an appeal under these Regulations to the Asylum and Immigration Tribunal as if it were an appeal against an immigration decision under section 82(1) of that Act:

- section 84(1)(**24**), except paragraphs (a) and (f);
- sections 85 to 87;
- sections 103A to 103E;
- section 105 and any regulations made under that section; and
- section 106 and any rules made under that section(**25**).

## SCHEDULE 2

Regulation 30

### EFFECT ON OTHER LEGISLATION

#### **Leave under the 1971 Act**

**1.**—(1) In accordance with section 7 of the Immigration Act 1988(**26**), a person who is admitted to or acquires a right to reside in the United Kingdom under these Regulations shall not require leave to remain in the United Kingdom under the 1971 Act during any period in which he has a right to reside under these Regulations but such a person shall require leave to remain under the 1971 Act during any period in which he does not have such a right.

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

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

**2.**—(1) For the purposes of the 1971 Act and the British Nationality Act 1981(**27**), a person who has a permanent right of residence under regulation 15 shall be regarded as a person who is in the United Kingdom without being subject under the immigration laws to any restriction on the period for which he may remain.

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

#### **Carriers' liability under the 1999 Act**

**3.** For the purposes of satisfying a requirement to produce a visa under section 40(1)(b) of the 1999 Act(**28**) (charges in respect of passenger without proper documents), “a visa of the required kind” includes an EEA family permit, a residence card or a permanent residence card required for admission under regulation 11(2).

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(24) Section 84(1) is amended by [S.R. 2003/341](#).

(25) Sections 85 to 87 and 105 to 106 are amended by, and sections 103A to 103E are inserted by, section 26 of the Asylum and Immigration (Treatment of Claimants etc) Act [2004 \(c. 19\)](#).

(26) [1988 c. 14](#).

(27) [1981 c. 61](#).

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

**Appeals under the 2002 Act and previous immigration Acts**

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

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

(2) A person who has been issued with a registration certificate, residence card, a document certifying permanent residence or a permanent residence card under these Regulations or a registration certificate under the Accession (Immigration and Worker Registration) Regulations 2004<sup>(29)</sup>, or a person whose passport has been stamped with a family member residence stamp, shall have no right of appeal under section 2 of the Special Immigration Appeals Commission Act 1997 or section 82(1) of the 2002 Act. Any existing appeal under those sections of those Acts or under the Asylum and Immigration Appeals Act 1993<sup>(30)</sup>, the Asylum and Immigration Act 1996<sup>(31)</sup> or the 1999 Act shall be treated as abandoned.

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

- (a) that claim has been rejected, but
- (b) he has a right to reside in the United Kingdom under these Regulations.

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

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

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

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

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

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

<sup>(29)</sup> S.I. 2004/1219, amended by S.I. 2004/1236 and S.I. 2005/2400.

<sup>(30)</sup> 1993 c. 23.

<sup>(31)</sup> 1996 c. 49.

## SCHEDULE 3

Regulation 31(2)

## REVOCATIONS AND SAVINGS

## PART 1

## TABLE OF REVOCATIONS

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>	<i>(3)</i> <i>Extent of revocation</i>
The Immigration (European Economic Area) Regulations 2000	<a href="#">S.I.2000/2326</a>	The whole Regulations
The Immigration (European Economic Area) (Amendment) Regulations 2001	<a href="#">S.I. 2001/865</a>	The whole Regulations
The Immigration (Swiss Free Movement of Persons) (No. 3) Regulations 2002	<a href="#">S.I. 2002/1241</a>	The whole Regulations
The Immigration (European Economic Area) (Amendment) Regulations 2003	<a href="#">S.I. 2003/549</a>	The whole Regulations
The Immigration (European Economic Area) (Amendment No. 2) Regulations 2003	<a href="#">S.I. 2003/3188</a>	The whole Regulations
The Accession (Immigration and Worker Registration) Regulations 2004	<a href="#">S.I. 2004/1219</a>	Regulations 3 and 6
The Immigration (European Economic Area) and Accession (Amendment) Regulations 2004	<a href="#">S.I. 2004/1236</a>	Regulation 2
The Immigration (European Economic Area) (Amendment) Regulations 2005	<a href="#">S.I. 2005/47</a>	The whole Regulations
The Immigration (European Economic Area)(Amendment) (No. 2) Regulations 2005	<a href="#">S.I. 2005/671</a>	The whole Regulations

## PART 2

## SAVINGS

1. The—

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

- (a) Immigration (Swiss Free Movement of Persons) (No. 3) Regulations 2002<sup>(32)</sup> are not revoked insofar as they apply the 2000 Regulations to posted workers; and
  - (b) the 2000 Regulations and the Regulations amending the 2000 Regulations are not revoked insofar as they are so applied to posted workers;
- and, accordingly, the 2000 Regulations, as amended, shall continue to apply to posted workers in accordance with the Immigration (Swiss Free Movement of Persons) (No. 3) Regulations 2002.

2. In paragraph 1, “the 2000 Regulations” means the Immigration (European Economic Area) Regulations 2000<sup>(33)</sup> and “posted worker” has the meaning given in regulation 2(4)(b) of the Immigration (Swiss Free Movement of Persons) (No. 3) Regulations 2002.

## SCHEDULE 4

Regulation 31(2)

### TRANSITIONAL PROVISIONS

#### Interpretation

##### 1. In this Schedule—

- (a) the “2000 Regulations” means the Immigration (European Economic Area) Regulations 2000<sup>(34)</sup> and expressions used in relation to documents issued or applied for under those Regulations shall have the meaning given in regulation 2 of those Regulations;
- (b) the “Accession Regulations” means the Accession (Immigration and Worker Registration) Regulations 2004<sup>(35)</sup>.

#### Existing documents

2.—(1) An EEA family permit issued under the 2000 Regulations shall, after 29<sup>th</sup> April 2006, be treated as if it were an EEA family permit issued under these Regulations.

(2) Subject to paragraph (4), a residence permit issued under the 2000 Regulations shall, after 29<sup>th</sup> April 2006, be treated as if it were a registration certificate issued under these Regulations.

(3) Subject to paragraph (5), a residence document issued under the 2000 Regulations shall, after 29<sup>th</sup> April 2006, be treated as if it were a residence card issued under these Regulations.

(4) Where a residence permit issued under the 2000 Regulations has been endorsed under the immigration rules to show permission to remain in the United Kingdom indefinitely it shall, after 29<sup>th</sup> April 2006, be treated as if it were a document certifying permanent residence issued under these Regulations and the holder of the permit shall be treated as a person with a permanent right of residence under regulation 15.

(5) Where a residence document issued under the 2000 Regulations has been endorsed under the immigration rules to show permission to remain in the United Kingdom indefinitely it shall, after 29<sup>th</sup> April 2006, be treated as if it were a permanent residence card issued under these Regulations and the holder of the permit shall be treated as a person with a permanent right of residence under regulation 15.

<sup>(32)</sup> S.I. 2002/1241.

<sup>(33)</sup> S.I. 2000/2326, amended by S.I. 2001/865, S.I. 2003/549, S.I. 2003/3188, S.I. 2005/47 and S.I. 2005/671.

<sup>(34)</sup> S.I. 2000/2326, amended by S.I. 2001/865, S.I. 2003/549, S.I. 2003/3188, S.I. 2005/47 and S.I. 2005/671.

<sup>(35)</sup> S.I. 2004/1219, amended by S.I. 2004/1236 and 2005/2400.



(6) Paragraphs (4) and (5) shall also apply to a residence permit or residence document which is endorsed under the immigration rules on or after 30<sup>th</sup> April 2006 to show permission to remain in the United Kingdom indefinitely pursuant to an application for such an endorsement made before that date.

### **Outstanding applications**

3.—(1) An application for an EEA family permit, a residence permit or a residence document made but not determined under the 2000 Regulations before 30 April 2006 shall be treated as an application under these Regulations for an EEA family permit, a registration certificate or a residence card, respectively.

(2) But the following provisions of these Regulations shall not apply to the determination of an application mentioned in sub-paragraph (1)—

- (a) the requirement to issue a registration certificate immediately under regulation 16(1); and
- (b) the requirement to issue a certificate of application for a residence card under regulation 17(3).

### **Decisions to remove under the 2000 Regulations**

4.—(1) A decision to remove a person under regulation 21(3)(a) of the 2000 Regulations shall, after 29<sup>th</sup> April 2006, be treated as a decision to remove that person under regulation 19(3)(a) of these Regulations.

(2) A decision to remove a person under regulation 21(3)(b) of the 2000 Regulations, including a decision which is treated as a decision to remove a person under that regulation by virtue of regulation 6(3)(a) of the Accession Regulations, shall, after 29<sup>th</sup> April 2006, be treated as a decision to remove that person under regulation 19(3)(b) of these Regulations.

(3) A deportation order made under section 5 of the 1971 Act by virtue of regulation 26(3) of the 2000 Regulations shall, after 29<sup>th</sup> April 2006, be treated as a deportation made under section 5 of the 1971 Act by virtue of regulation 24(3) of these Regulations.

### **Appeals**

5.—(1) Where an appeal against an EEA decision under the 2000 Regulations is pending immediately before 30<sup>th</sup> April 2006 that appeal shall be treated as a pending appeal against the corresponding EEA Decision under these Regulations.

(2) Where an appeal against an EEA decision under the 2000 Regulations has been determined, withdrawn or abandoned it shall, on and after 30<sup>th</sup> April 2006, be treated as an appeal against the corresponding EEA decision under these Regulations which has been determined, withdrawn or abandoned, respectively.

(3) For the purpose of this paragraph—

- (a) a decision to refuse to admit a person under these Regulations corresponds to a decision to refuse to admit that person under the 2000 Regulations;
- (b) a decision to remove a person under regulation 19(3)(a) of these Regulations corresponds to a decision to remove that person under regulation 21(3)(a) of the 2000 Regulations;
- (c) a decision to remove a person under regulation 19(3)(b) of these Regulations corresponds to a decision to remove that person under regulation 21(3)(b) of the 2000 Regulations, including a decision which is treated as a decision to remove a person under regulation 21(3)(b) of the 2000 Regulations by virtue of regulation 6(3)(a) of the Accession Regulations;

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

- (d) a decision to refuse to revoke a deportation order made against a person under these Regulations corresponds to a decision to refuse to revoke a deportation order made against that person under the 2000 Regulations, including a decision which is treated as a decision to refuse to revoke a deportation order under the 2000 Regulations by virtue of regulation 6(3)(b) of the Accession Regulations;
- (e) a decision not to issue or renew or to revoke an EEA family permit, a registration certificate or a residence card under these Regulations corresponds to a decision not to issue or renew or to revoke an EEA family permit, a residence permit or a residence document under the 2000 Regulations, respectively.

### Periods of residence under the 2000 Regulations

6.—(1) Any period during which a person carried out an activity or was resident in the United Kingdom in accordance with the 2000 Regulations shall be treated as a period during which the person carried out that activity or was resident in the United Kingdom in accordance with these Regulations for the purpose of calculating periods of activity and residence under these Regulations.

## SCHEDULE 5

Regulation 31(2)

### CONSEQUENTIAL AMENDMENTS

#### Statutory Instruments

#### *The Channel Tunnel (International Arrangements) Order 1993*

1.—(1) The Channel Tunnel (International Arrangements) Order 1993<sup>(36)</sup> is amended as follows.

(2) In Schedule 4, in paragraph 5—

- (a) at the beginning of the paragraph, for “the Immigration (European Economic Area) Regulations 2000” there is substituted “the Immigration (European Economic Area) Regulations 2006”;
- (b) in sub-paragraph (a), for “regulation 12(2)” there is substituted “regulation 11(2)” and for “residence document or document proving family membership” there is substituted “residence card or permanent residence card”;
- (c) for sub-paragraph (b) there is substituted—
  - “(b) in regulations 11(4) and 19(2) after the word “arrival” and in regulations 20(4) and (5) after the words “United Kingdom” insert “or the time of his production of the required documents in a control zone or a supplementary control zone”.

#### *The Travel Restriction Order (Prescribed Removal Powers) Order 2002*

2.—(1) The Travel Restriction Order (Prescribed Removal Powers) Order 2002<sup>(37)</sup> is amended as follows.

(2) In the Schedule, for “Immigration (European Economic Area) Regulations 2000 (2000/2326)” in the first column of the table there is substituted “Immigration (European Economic Area)

<sup>(36)</sup> S.I. 1993/1813, amended by S.I. 1994/1405, S.I. 1996/2283, S.I. 2000/913, S.I. 2000/1775, S.I. 2001/178, S.I. 2001/418, S.I. 2001/1544, S.I. 2000/3707 and S.I. 2003/2799.

<sup>(37)</sup> S.I. 2002/313.

Regulations 2006” and for “Regulation 21(3)” in the corresponding row in the second column of the table there is substituted “Regulation 19(3)”.

*The Immigration (Notices) Regulations 2003*

**3.—**(1) The Immigration (Notices) Regulations 2003(**38**) are amended as follows.

(2) In regulation 2, in the definition of “EEA decision”—

(a) at the end of paragraph (b), “or” is omitted;

(b) in paragraph (c), after “residence document;”, there is inserted “or”; and

(c) after paragraph (c), there is inserted—

“(d) on or after 30th April 2006, entitlement to be issued with or have renewed, or not to have revoked, a registration certificate, residence card, document certifying permanent residence or permanent residence card;”

*The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003*

**4.—**(1) The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003(**39**) is amended as follows.

(2) In article 11(1), for sub-paragraph (e) there is substituted—

“(e) the Immigration (European Economic Area) Regulations 2006.”.

(3) In Schedule 2, in paragraph 5—

(a) at the beginning of the paragraph, for “the Immigration (European Economic Area) Regulations 2000” there is substituted “the Immigration (European Economic Area) Regulations 2006”;

(b) in sub-paragraph (a), for “in regulation 2, at the beginning insert” there is substituted “in regulation 2(1), after the definition of “civil partner” insert“;

(c) in sub-paragraph (b), for “regulation 12(2)” there is substituted “regulation 11(2)” and for “residence document or document proving family membership” there is substituted “residence card or permanent residence card”;

(d) for sub-paragraph (c) there is substituted—

“(c) in regulations 11(4) and 19(2) after the word “arrival” and in regulations 20(4) and (5) after the words “United Kingdom” insert “or the time of his production of the required documents in a Control Zone”.

*The Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2003*

**5.—**(1) The Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2003(**40**) is amended as follows.

(2) In Article 2, in the definition of “EEA national” and “family member of an EEA national”, for “Immigration (European Economic Area) Regulations 2000” there is substituted “Immigration (European Economic Area) Regulations 2006”.

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(38) S.I. 2003/658.

(39) S.I. 2003/2818.

(40) S.I. 2003/3214.

*The Immigration (Restrictions on Employment) Order 2004*

- 6.—(1) The Immigration (Restrictions on Employment) Order 2004<sup>(41)</sup> is amended as follows.
- (2) In Part 1 of the Schedule (descriptions of documents for the purpose of article 4(2)(a) of the Order)—
- (a) for paragraph 4 there is substituted—
- “4. A registration certificate or document certifying permanent residence within the meaning of regulation 2 of the Immigration (European Economic Area) Regulations 2006, including a document which is treated as a registration certificate or document certifying permanent residence by virtue of Schedule 4 to those Regulations.”;
- (b) for paragraph 5 there is substituted—
- “5. A residence card or a permanent residence card within the meaning of regulation 2 of the Immigration (European Economic Area) Regulations 2006, including a document which is treated as a residence card or a permanent residence card by virtue of Schedule 4 to those Regulations”.

*The Accession (Immigration and Worker Registration) Regulations 2004*

- 7.—(1) The Accession (Immigration and Worker Registration) Regulations 2004<sup>(42)</sup> are amended as follows.
- (2) In regulation 1(2) (interpretation)—
- (a) after paragraph (b) there is inserted—
- “(ba) “the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006;”;
- (b) in paragraph (j), for “regulation 3 of the 2000 Regulations” there is substituted “regulation 4 of the 2006 Regulations”.
- (3) In regulation 2 (“accession State worker requiring registration”)—
- (a) for paragraph (6)(b) there is substituted—
- “(b) a family member of a Swiss or EEA national (other than an accession State worker requiring registration) who has a right to reside in the United Kingdom under regulation 14(1) or 15 of the 2006 Regulations;”;
- (b) paragraph (9)(a) is omitted;
- (c) for paragraph (9)(c) there is substituted—
- “(c) “family member” has the same meaning as in regulation 7 of the 2006 Regulations.”.
- (4) In regulation 4 (right of residence of work seekers and workers from relevant acceding States during the accession period)—
- (a) in paragraph (1), before “Council Directive” there is inserted “Council Directive [2004/38/EC](#) of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>(43)</sup>, insofar as it takes over provisions of”;

<sup>(41)</sup> S.I. [2004/755](#).

<sup>(42)</sup> S.I. [2004/1219](#); amended by S.I. [2004/1236](#) and S.I. [2005/2400](#).

<sup>(43)</sup> OJ L 158, 30.4.2004, p.77 (the full title of the Directive is Council Directive [2004/38/EC](#) of the European Parliament and the Council on the rights of citizens of the Union and their family members to move and reside freely within the territory of the member States amending Regulation (EEC) No. [1612/68](#) and repealing Directives [64/221/EEC](#), [68/360/EEC](#), [72/194/EEC](#), [75/34/EEC](#), [90/364/EEC](#), [90/365/EEC](#) and [93/96/EEC](#)).

- (b) in paragraph (3), for “2000 Regulations” there is substituted “2006 Regulations”;
  - (c) in paragraph (4), for “An” there is substituted “A national of a relevant accession State who is seeking employment and an” and for “2000 Regulations” there is substituted “2006 Regulations”.
- (5) For regulation 5 (application of 2000 Regulations in relation to accession State worker requiring registration) there is substituted—

“Application of 2006 Regulations in relation to accession State worker requiring registration

**5.—(1)** The 2006 Regulations shall apply in relation to a national of a relevant accession State subject to the modifications set out in this regulation.

(2) A national of a relevant accession State who is seeking employment in the United Kingdom shall not be treated as a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of the 2006 Regulations and an accession State worker requiring registration shall be treated as a worker for the purpose of that definition only during a period in which he is working in the United Kingdom for an authorised employer.

(3) Subject to paragraph (4), regulation 6(2) of the 2006 Regulations shall not apply to an accession State worker requiring registration who ceases to work.

(4) Where an accession State worker requiring registration ceases working for an authorised employer in the circumstances mentioned in regulation 6(2) of the 2006 Regulations during the one month period beginning on the date on which the work begins, that regulation shall apply to that worker during the remainder of that one month period.

(5) An accession State worker requiring registration shall not be treated as a qualified person for the purpose of regulations 16 and 17 of the 2006 Regulations (issue of registration certificates and residence cards).”

*The Asylum and Immigration Tribunal (Procedure) Rules 2005*

**8.—(1)** The Asylum and Immigration Tribunal (Procedure) Rules 2005**(44)** are amended as follows.

(2) In regulation 18(1)(b), after “(“the 2000 Regulations”)“ there is inserted “or, on or after 30<sup>th</sup> April 2006, paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”)“.

(3) In regulation 18(2), after “2000 Regulations” there is inserted “or paragraph 4(2) of Schedule 2 to the 2006 Regulations”.

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(44) S.I. 2005/230.

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## EXPLANATORY NOTE

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

These Regulations implement Directive [2004/38/EC](#) of the European Parliament and the Council of 29<sup>th</sup> April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives [64/221/EEC](#), [68/360/EEC](#), [72/194/EEC](#), [73/148/EEC](#), [75/35/EEC](#), [90/364/EEC](#), [90/365/EEC](#) and [93/96/EEC](#). The Regulations come into force on 30<sup>th</sup> April 2006. A Transposition Note setting how the Government has transposed into UK law the main elements of this Directive will be available on the Office of Public Sector Information website.

Directive [2004/38/EC](#) provides for the free movement of Union citizens and their family members within the territory of the member States. The repealed Directives were extended to Norway, Iceland and Liechtenstein by the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May 1992 (OJ No. L 1, 3.1.94, p.3) and it is envisaged that Directive [2004/38/EC](#) will also be extended to these States. In addition, an agreement between the European Community and its member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons, signed at Brussels on 21<sup>st</sup> June 1999 (Cm 4904) confers on Swiss nationals and their family members broadly similar rights of entry into and residence in the United Kingdom as were contained in the repealed Directives. As was the case with the Regulations implementing the repealed Directives, these Regulations will also apply to nationals from Norway, Iceland Liechtenstein and Switzerland and their family members as well as to Union citizens and their family members. This will avoid having to apply a slightly different free movement regime to nationals from Norway, Iceland, Liechtenstein and Switzerland and their family members from that which has to apply to Union citizens and their family members under Directive [2004/38/EC](#).

Directive [2004/38/EC](#) is based on the provisions of the repealed Directives but it also contains new provisions, some of which reflect the case law of the European Court of Justice relating to the repealed Directives and the free movement of persons and some of which represent new developments of the law on the free movement of persons. The main new developments, which are reflected in these Regulations, are:

- (a) the inclusion of civil partners as family members of EU nationals along with spouses so far as member States who treat such partnerships as equivalent to marriage are concerned;
- (b) the introduction of an initial right of residence of 3 months in a host member State for EU nationals and their family members provided they do not become an unreasonable burden on the social assistance system of the host member State – this right of residence is not conditional on the EU national being, for example, a worker, self-employed, as was the case under the repealed Directives;
- (c) the introduction of a permanent right of residence in a host member State, which generally applies after 5 years residence in that member State.

Part 1 (regulations 1 to 10) of the Regulations contains the interpretation provisions for the Regulations. Part 2 (regulations 11 to 15) sets out the free movement rights conferred on EEA nationals—

- (i) the right of EEA nationals and their family members to be admitted to the United Kingdom provided they have the relevant documents (*regulation 11*);

- (ii) the right of EEA nationals and their family members to reside in the United Kingdom for an initial period of 3 months (*regulation 13*);
- (iii) the right of a “qualified person” (a jobseeker, worker, self-employed person, self-sufficient person or student), a family member a qualified person, and a “family member who has retained the right of residence” (for example, a family member of a deceased qualified person who satisfies specified conditions) to reside in the United Kingdom for as long as they have this status (*regulation 14*); and
- (iv) the right of EEA nationals and their family members to permanent residence in the United Kingdom in specified circumstances (for example, after they have resided in the United Kingdom under the Regulations for 5 years (*regulation 15*)).

Part 3 (regulations 16 to 18) provides for the issue of residence documentation, which can be used as proof of the rights of residence provided for in the Regulations. Part 4 (regulations 19 to 21) provides for the exclusion and removal of EEA nationals and their family members. As under the previous Directives, EEA nationals and their family members can be excluded on public policy, public security and public health grounds. Part 5 (regulations 22 to 24) contains procedural provisions relating to persons who claim admission under the Regulations, who are refused admission, or are being removed. Part 6 (regulations 25 to 29) and Schedule 1 set out the appeal rights in relation to decisions taken under the Regulations. Schedule 2 deals with the effect of the Regulations on other legislation. Schedule 3 lists the regulations that are being repealed by the new Regulations. Schedule 4 contains transitional provisions. Schedule 5 contains consequential amendments.