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STATUTORY INSTRUMENTS

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**2006 No. 1003**

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

**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;

“Commission” has the same meaning as in the Special Immigration Appeals Commission Act 1997 <sup>M1</sup>;

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998 <sup>M2</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>M3</sup> and the Protocol relating to the Status of Refugees done at New York on 31st January 1967 <sup>M4</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treated as pending during the period when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.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is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.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.

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**Marginal Citations**

**M1** 1997 c. 68.

**M2** 1998 c. 42.

**M3** Cmd 9171.

**M4** Cmnd 3906.

**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.

*Status: Point in time view as at 30/04/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Immigration (European Economic Area) Regulations 2006, PART 6. (See end of Document for details)*

(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>M5</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.

#### **Marginal Citations**

**M5** Section 82(1) is amended by section 26 of the [Asylum and Immigration \(Treatment of Claimants etc\) Act 2004 \(c. 19\)](#).

### **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;
- (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—

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- (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.

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