STATUTORY INSTRUMENTS

2016 No. 1052

IMMIGRATION

The Immigration (European Economic Area) Regulations 2016

Made - - - - 2nd November 2016
Laid before Parliament 3rd November 2016
Coming into force in accordance with regulation 1(2)

The Secretary of State, being a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred by that section and those conferred by section 109 of the Nationality, Immigration and Asylum Act 2002(**3**), makes the following Regulations.

PART 1

PRELIMINARY

Citation and commencement

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

(2) These Regulations come into force—

(a) for the purposes of this regulation, regulation 44 and Schedule 5 (transitory provisions), on 25th November 2016;

(b) for all other purposes, on 1st February 2017.

General interpretation

2.—(1) In these Regulations—

"the 1971 Act" means the Immigration Act 1971(**4**);

(**1**) S.I. 2000/1813.
(**2**) 1972 c. 68.
(**3**) 2002 c. 41.
(**4**) 1971 c. 77.

"the 1999 Act" means the Immigration and Asylum Act 1999(**5**);

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002;

"the 2006 Regulations" means the Immigration (European Economic Area) Regulations 2006(**6**);

[[F1]"the 2016 Act" means the Immigration Act 2016;**]**

"civil partner" does not include—

(a) a party to a civil partnership of convenience; or

(b) the civil partner ("C") of a person ("P") where a spouse, civil partner or durable partner of C or P is already present in the United Kingdom;

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

(a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or

(b) any other criteria that the party to the civil partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

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

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

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

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

"derivative right to reside" means a right to reside under regulation 16;

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

"durable partner" does not include—

(a) a party to a durable partnership of convenience; or

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

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

(a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or

(b) any other criteria that the party to the durable partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

"EEA decision" means a decision under these Regulations that concerns—

(a) a person's entitlement to be admitted to the United Kingdom;

(b) a person's entitlement to be issued with or have renewed, or not to have revoked, **[**[F2]an EEA family permit,**]** a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card (but does not include **[**[F3]a decision to reject an application for the above documentation as invalid**]**);

(**5**) 1999 c. 33.

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

(c) a person's removal from the United Kingdom; or

(d) the cancellation, under regulation 25, of a person's right to reside in the United Kingdom,

but does not include [F4]... a decision to **[**[F5]refuse**]** an application under regulation 26(4) (misuse of a right to reside: material change of circumstances), or any decisions under regulation 33 (human rights considerations and interim orders to suspend removal) or 41 (temporary admission to submit case in person);

"EEA family permit" means a document issued under regulation 12;

[[F6]"EEA national" means—

(a) a national of an EEA State who is not also a British citizen; or

(b) a national of an EEA State who is also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national, in accordance with regulation 14 or 15,

save that a person does not fall within paragraph (b) if the EEA State of which they are a national became a member State after that person acquired British citizenship.**]**

"EEA State" means—

(a) a member State, other than the United Kingdom; or

(b) Liechtenstein, Iceland, Norway or Switzerland;

"entry clearance" has the meaning given in section 33(1) of the 1971 Act(**7**);

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

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

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

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

(a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or

(b) any other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

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

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

"qualifying EEA State residence card" means a valid document called a "Residence card of a family member of a Union Citizen" issued under Article 10 of Council Directive 2004/38/EC(**8**) (as applied, where relevant, by the EEA agreement) by any EEA State (except Switzerland) to a non-EEA family member of an EEA national as proof of the holder's right of residence in that State;

"registration certificate" means a certificate issued under regulation 17;

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

"residence card" means a card issued under regulation 18;

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

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

(**8**) OJ No L 158, 30.4.04, p98.

"spouse" does not include—

(a) a party to a marriage of convenience; or

(b) the spouse ("S") of a person ("P") where a spouse, civil partner or durable partner of S or P is already present in the United Kingdom.

(2) Section 11 of the 1971 Act (construction of references to entry)(**9**) applies for the purpose of determining whether a person has entered the United Kingdom for the purpose of these Regulations as it applies for the purpose of determining whether a person has entered the United Kingdom for the purpose of that Act.

Textual Amendments

F1 Words in reg. 2 inserted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(2)**

F2 Words in reg. 2(1) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(2)(a)(i)**

F3 Words in reg. 2(1) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(2)(a)(ii)**

F4 Words in reg. 2(1) omitted (28.3.2019) by virtue of The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(2)**

F5 Word in reg. 2(1) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(2)(b)**

F6 Words in reg. 2(1) substituted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 1**

Continuity of residence

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

(2) Continuity of residence is not affected by—

(a) periods of absence from the United Kingdom which do not exceed six months in total in any year;

(b) periods of absence from the United Kingdom on compulsory military service; or

(c) one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

(3) Continuity of residence is broken when—

(a) a person serves a sentence of imprisonment;

(b) a deportation or exclusion order is made in relation to a person; or

(c) a person is removed from the United Kingdom under these Regulations.

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

(a) prior to serving a sentence of imprisonment, the EEA national had forged integrating links with the United Kingdom;

(b) the effect of the sentence of imprisonment was not such as to break those integrating links; and

(**9**) Section 11 was amended by the 2002 Act, section 62(8), and S.I 1993/1813 and 2003/1016.

(c) taking into account an overall assessment of the EEA national's situation, it would not be appropriate to apply paragraph (3)(a) to the assessment of that EEA national's continuity of residence.

"Worker", "self-employed person", "self-sufficient person" and "student"

4.—(1) In these Regulations—

(a) "worker" means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union(**10**);

(b) "self-employed person" means a person who is established in the United Kingdom in order to pursue activity as a self-employed person in accordance with Article 49 of the Treaty on the Functioning of the European Union(**11**);

(c) "self-sufficient person" means a person who has—

(i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's period of residence; and

(ii) comprehensive sickness insurance cover in the United Kingdom;

(d) "student" means a person who—

(i) is enrolled, for the principal purpose of following a course of study (including vocational training), at a public or private establishment which is—

(aa) financed from public funds; or

(bb) otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or training within the law or administrative practice of the part of the United Kingdom in which the establishment is located;

(ii) has comprehensive sickness insurance cover in the United Kingdom; and

(iii) has assured the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that the person has sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's intended period of residence.

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

(3) In sub-paragraphs (1)(c) and (d)—

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

(b) the requirement for the student or self-sufficient person to have comprehensive sickness insurance cover in the United Kingdom is only satisfied if such cover extends to cover both the student or self-sufficient person and all their relevant family members.

(4) In paragraph (1)(c) and (d) and paragraph (3), the resources of the student or self-sufficient person and, where applicable, any of their relevant family members, are to be regarded as sufficient if—

(**10**) OJ No C326, 26.10.12, p65.
(**11**) OJ No C326, 26.10.12, p67.

(a) they exceed the maximum level of resources which a British citizen (including the resources of the British citizen's family members) may possess if the British citizen is to become eligible for social assistance under the United Kingdom benefit system; or

(b) paragraph (a) does not apply but, taking into account the personal circumstances of the person concerned and, where applicable, all their relevant family members, it appears to the decision maker that the resources of the person or persons concerned should be regarded as sufficient.

(5) For the purposes of regulation 16(2) (criteria for having a derivative right to reside), references in this regulation to "family members" includes a "primary carer" as defined in regulation 16(8).

"Worker or self-employed person who has ceased activity"

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

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

(a) terminates activity as a worker or self-employed person and—

(i) had reached the age of entitlement to a state pension on terminating that activity; or

(ii) in the case of a worker, ceases working to take early retirement;

(b) pursued activity as a worker or self-employed person in the United Kingdom for at least 12 months prior to the termination; and

(c) resided in the United Kingdom continuously for more than three years prior to the termination.

(3) The condition in this paragraph is that the person terminates activity in the United Kingdom as a worker or self-employed person as a result of permanent incapacity to work; and—

(a) had resided in the United Kingdom continuously for more than two years **[**[F7]immediately**]** prior to the termination; or

(b) the incapacity is the result of an accident at work or an occupational disease that entitles the person to a pension payable in full or in part by an institution in the United Kingdom.

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

(a) is active as a worker or self-employed person in an EEA State but retains a place of residence in the United Kingdom and returns, as a rule, to that place at least once a week; and

(b) **[**[F8]immediately**]** prior to becoming so active in the EEA State, had been continuously resident and continuously active as a worker or self-employed person in the United Kingdom for at least three years.

(5) A person who satisfied the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) must, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the United Kingdom during any period during which that person is working or self-employed in the EEA State.

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

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

(a) inactivity for reasons not of the person's own making;

(b) inactivity due to illness or accident; and

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

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

Textual Amendments

F7 Word in reg. 5(3)(a) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(3)(a)**

F8 Word in reg. 5(4)(b) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(3)(b)**

"Qualified person"

6.—(1) In these Regulations—

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

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

(a) a jobseeker;

(b) a worker;

(c) a self-employed person;

(d) a self-sufficient person; or

(e) a student;

"relevant period" means—

(a) in the case of a person retaining worker status under paragraph (2)(b) **[**[F9]or self-employed person status under paragraph (4)(b)**]**, a continuous period of six months;

(b) in the case of a jobseeker, 91 days, minus the cumulative total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.

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

(a) is temporarily unable to work as the result of an illness or accident;

(b) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided the person—

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions A and B;

(c) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided the person—

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions A and B;

(d) is involuntarily unemployed and has embarked on vocational training; or

(e) has voluntarily ceased working and has embarked on vocational training that is related to the person's previous employment.

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

[[F10](4) A person who is no longer in self-employment must continue to be treated as a self-employed person provided that the person—

(a) is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident;

(b) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for at least one year provided the person—

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions D and E;

(c) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for less than one year, provided the person—

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions D and E;

(d) is involuntarily no longer in self-employment and has embarked on vocational training; or

(e) has voluntarily ceased self-employment and has embarked on vocational training that is related to the person's previous occupation.

(4A) A person to whom paragraph (4)(c) applies may only retain self-employed person status for a maximum of six months.

(4B) Condition D is that the person—

(a) entered the United Kingdom as a self-employed person or in order to seek employment as a self-employed person; or

(b) is present in the United Kingdom seeking employment or self-employment, immediately after enjoying a right to reside under sub-paragraphs (c) to (e) of the definition of qualified person in paragraph (1) (disregarding any period during which self-employed status was retained pursuant to paragraph (4)(b) or (c)).

(4C) Condition E is that the person provides evidence of seeking employment or self-employment and having a genuine chance of being engaged.**]**

(5) Condition A is that the person—

(a) entered the United Kingdom in order to seek employment; or

(b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside under **[**[F11]sub-paragraphs (b), (d) or (e)**]** of the definition of qualified person in paragraph (1) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (c)).

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

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

(a) a worker under paragraph (2)(b); [F12]...

(b) a jobseeker; **[**[F13]or (c) a self-employed person under paragraph (4)(b)**]**

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

(8) Condition C applies where the person concerned has, previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B **[**[F14]or, as the case may be, conditions D and E**]**—

(a) in the case of a person to whom paragraph (2)(b) or (c) **[**[F15]or (4)(b) or (c)**]** applied, for at least six months; or

(b) in the case of a jobseeker, for at least 91 days in total,

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

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

(10) Where condition C applies—

(a) paragraph (7) does not apply; and

(b) condition B **[**[F16]or, as the case may be, condition E**]** has effect as if "compelling" were inserted before "evidence".

Textual Amendments

F9 Words in reg. 6(1) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 2(a)**

F10 Reg. 6(4)-(4C) substituted for reg. 6(4) (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 2(b)**

F11 Words in reg. 6(5)(b) substituted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 2(c)**

F12 Word in reg. 6(7)(a) omitted (24.7.2018) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 2(d)**

F13 Reg. 6(7)(c) and word inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 2(e)**

F14 Words in reg. 6(8) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 2(f)(i)**

F15 Words in reg. 6(8)(a) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 2(f)(ii)**

F16 Words in reg. 6(10)(b) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 2(g)**

"Family member"

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

(a) A's spouse or civil partner;

(b) A's direct descendants, or the direct descendants of A's spouse or civil partner who are either—

(i) aged under 21; or

(ii) dependants of A, or of A's spouse or civil partner;

(c) dependent direct relatives in A's ascending line, or in that of A's spouse or civil partner.

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

(a) in the case of paragraph (1)(b), the person is the dependent child of A or of A's spouse or civil partner; or

(b) A also falls within one of the other categories of qualified person mentioned in regulation 6(1).

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

(a) B continues to satisfy the conditions in regulation **[**[F17]8(1A),**]** 8(2), (3), (4) or (5); and

(b) the EEA family permit, registration certificate or residence card remains in force.

(4) A must be an EEA national unless regulation 9 applies (family members **[**[F18]and extended family members**]** of British citizens).

Textual Amendments

F17 Word in reg. 7(3)(a) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(4)**

F18 Words in reg. 7(4) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(3)**

"Extended family member"

8.—(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph **[**[F19](1A),**]** (2), (3), (4) or (5).

[[F20](1A) The condition in this paragraph is that the person—

(a) is under the age of 18;

(b) is subject to a non-adoptive legal guardianship order in favour of an EEA national that is recognised under the national law of the state in which it was contracted;

(c) has lived with the EEA national since their placement under the guardianship order;

(d) has created family life with the EEA national; and

(e) has a personal relationship with the EEA national that involves dependency on the EEA national and the assumption of parental responsibility, including legal and financial responsibilities, for that person by the EEA national.**]**

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

(a) a relative of an EEA national; and

(b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either—

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

(3) The condition in this paragraph is that the person is a relative of an EEA national and on serious health grounds, strictly requires the personal care of the EEA national **[**[F21]or the spouse or civil partner of the EEA national**]**.

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

(5) The condition in this paragraph is that the person is the partner (other than a civil partner) of, and in a durable relationship with, an EEA national **[**[F22]or the child (under the age of 18) of that partner**]**, and is able to prove this to the decision maker.

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

(a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related;

(b) referred to in paragraph (5), the EEA national who is the durable partner of the extended family member.

(7) In **[**[F23]paragraphs (2), (3) and (4)**]**, "relative of an EEA national" includes a relative of the spouse or civil partner of an EEA national [F24]....

[[F25](8) Where an extensive examination of the personal circumstances of the applicant is required under these Regulations, it must include examination of the following—

(a) the best interests of the applicant, particularly where the applicant is a child;

(b) the character and conduct of the applicant; and

(c) whether an EEA national would be deterred from exercising their free movement rights if the application was refused.**]**

Textual Amendments

F19 Word in reg. 8(1) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(5)(a)**

F20 Reg. 8(1A) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(5)(b)**

F21 Words in reg. 8(3) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(5)(c)**

F22 Words in reg. 8(5) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(5)(d)**

F23 Words in reg. 8(7) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(5)(e)(i)**

F24 Words in reg. 8(7) omitted (15.8.2019) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(5)(e)(ii)**

F25 Reg. 8(8) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(5)(f)**

Family members [[F26]and extended family members] of British citizens

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

[[F27](1A) These Regulations apply to a person who is the extended family member ("EFM") of a BC as though the BC were an EEA national if—

(a) the conditions in paragraph (2) are satisfied; and

(b) the EFM was lawfully resident in the EEA State referred to in paragraph (2)(a)(i).**]**

(2) The conditions are that—

(a) BC—

(i) is residing in an EEA State as a worker, self-employed person, self-sufficient person or a student, or so resided immediately before returning to the United Kingdom; or

(ii) has acquired the right of permanent residence in an EEA State;

(b) F **[**[F28]or EFM**]** and BC resided together in the EEA State; [F29]...

(c) F **[**[F30]or EFM**]** and BC's residence in the EEA State was genuine.

[[F31]**[**[F32](d) either—

(i) F was a family member of BC during all or part of their joint residence in the EEA State;

(ii) F was an EFM of BC during all or part of their joint residence in the EEA State, during which time F was lawfully resident in the EEA State; or

(iii) EFM was an EFM of BC during all or part of their joint residence in the EEA State, during which time EFM was lawfully resident in the EEA State;**]**

(e) genuine family life was created or strengthened during **[**[F33]F or EFM and BC's**]** joint residence in the EEA State**]**; **[**[F34]and**]**

[[F35](f) the conditions in sub-paragraphs (a), (b) and (c) have been met concurrently.**]**

(3) Factors relevant to whether residence in the EEA State is or was genuine include—

(a) whether the centre of BC's life transferred to the EEA State;

(b) the length of F **[**[F36]or EFM**]** and BC's joint residence in the EEA State;

(c) the nature and quality of the F **[**[F37]or EFM**]** and BC's accommodation in the EEA State, and whether it is or was BC's principal residence;

(d) the degree of F **[**[F38]or EFM**]** and BC's integration in the EEA State;

(e) whether F's **[**[F39]or EFM's**]** first lawful residence in the EU with BC was in the EEA State.

(4) This regulation does not apply—

(a) where the purpose of the residence in the EEA State was as a means for circumventing any immigration laws applying to non-EEA nationals to which F **[**[F40]or EFM**]** would otherwise be subject (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); [F41]...

[F42](b) . . . . . .

(5) Where these Regulations apply to F **[**[F43]or EFM**]**, BC is to be treated as holding a valid passport issued by an EEA State for the purposes of the application of these Regulations to F **[**[F43]or EFM**]**.

(6) In paragraph (2)(a)(ii), BC is only to be treated as having acquired the right of permanent residence in the EEA State if such residence would have led to the acquisition of that right under regulation 15, had it taken place in the United Kingdom.

(7) For the purposes of determining whether, when treating the BC as an EEA national under these Regulations in accordance with paragraph (1), BC would be a qualified person—

(a) any requirement to have comprehensive sickness insurance cover in the United Kingdom still applies, save that it does not require the cover to extend to BC;

(b) in assessing whether BC can continue to be treated as a worker under regulation 6(2)(b) or (c), BC is not required to satisfy condition A;

(c) in assessing whether BC can be treated as a jobseeker as defined in regulation 6(1), BC is not required to satisfy conditions A and, where it would otherwise be relevant, condition C.

Textual Amendments

F26 Words in reg. 9 heading inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(4)**

F27 Reg. 9(1A) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(a)**

F28 Words in reg. 9(2)(b) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(b)(i)**

F29 Word in reg. 9(2)(b) omitted (24.7.2018) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 3(a)**

F30 Words in reg. 9(2)(c) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(b)(ii)**

F31 Reg. 9(2)(d)(e) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 3(b)**

F32 Reg. 9(2)(d) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(6)(a)**

F33 Words in reg. 9(2)(e) substituted (28.3.2019) by virtue of The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(b)(iv)**

F34 Word in reg. 9(2)(e) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(6)(b)**

F35 Reg. 9(2)(f) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(6)(c)**

F36 Words in reg. 9(3)(b) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(c)(i)**

F37 Words in reg. 9(3)(c) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(c)(ii)**

F38 Words in reg. 9(3)(d) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(c)(iii)**

F39 Words in reg. 9(3)(e) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(c)(iv)**

F40 Words in reg. 9(4)(a) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(d)(i)(aa)**

F41 Word in reg. 9(4)(a) omitted (28.3.2019) by virtue of The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(d)(i)(bb)**

F42 Reg. 9(4)(b) omitted (28.3.2019) by virtue of The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(d)(ii)**

F43 Words in reg. 9(5) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(5)(e)**

[F44 Dual national: national of an EEA State who acquires British citizenship

9A.—(1) In this regulation "DN" means a person within paragraph (b) of the definition of "EEA national" in regulation 2(1).

(2) DN who comes within the definition of "qualified person" in regulation 6(1) is only a qualified person for the purpose of these Regulations if DN—

(a) came within the definition of "qualified person" at the time of acquisition of British citizenship; and

(b) has not at any time subsequent to the acquisition of British citizenship lost the status of qualified person.

(3) Regulation 15 only applies to DN, or to the family member of DN who is not an EEA national, if DN satisfies the condition in paragraph (4).

(4) The condition in this paragraph is that at the time of acquisition of British citizenship DN either—

(a) was a qualified person; or

(b) had acquired a right of permanent residence in accordance with these Regulations.]

Textual Amendments

F44 Reg. 9A inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 4** (with reg. 3)

"Family member who has retained the right of residence"

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

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

(a) was a family member of a qualified person or of an EEA national with a right of permanent residence when the qualified person or the EEA national with the right of permanent residence died;

(b) resided in the United Kingdom in accordance with these Regulations for at least the year immediately before the death of the qualified person or the EEA national with a right of permanent residence; and

(c) satisfies the condition in paragraph (6).

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

(a) is the direct descendant of—

(i) a qualified person or an EEA national with a right of permanent residence who has died;

(ii) a person who ceased to be a qualified person on ceasing to reside in the United Kingdom;

(iii) the spouse or civil partner of the qualified person or EEA national described in sub-paragraph (i) immediately preceding that qualified person or EEA national's death; or

(iv) the spouse or civil partner of the person described in sub-paragraph (ii); and

(b) was attending an educational course in the United Kingdom immediately before the qualified person or the EEA national with a right of permanent residence died, or ceased to be a qualified person, and continues to attend such a course.

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

(5) The condition in this paragraph is that the person ("A")—

(a) ceased to be a family member of a qualified person or an EEA national with a right of permanent residence on the **[**[F45]initiation of proceedings for the termination**]** of the marriage or civil partnership of A;

(b) was residing in the United Kingdom in accordance with these Regulations at the date of the **[**[F45]initiation of proceedings for the termination**]**;

(c) satisfies the condition in paragraph (6); and

(d) either—

(i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership, the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;

(ii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has custody of a child of that qualified person or EEA national;

(iii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has the right of access to a child of that qualified person or EEA national, where the child is under the age of 18 and where a court has ordered that such access must take place in the United Kingdom; or

(iv) the continued right of residence in the United Kingdom of A is warranted by particularly difficult circumstances, such as where A or another family member has been a victim of domestic violence whilst the marriage or civil partnership was subsisting.

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

(a) is not an EEA national but would, if the person were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or

(b) is the family member of a person who falls within paragraph (a).

(7) In this regulation, "educational course" means a course within the scope of Article 10 of Council Regulation (EU) No. 492/2011(**12**).

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

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

Textual Amendments

F45 Words in reg. 10(5) substituted (15.8.2019) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(7)**

PART 2

EEA RIGHTS

Right of admission to the United Kingdom

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

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

(a) a family member of an EEA national and produces on arrival a valid passport and qualifying EEA State residence card, provided the conditions in regulation 23(4) (family member of EEA national must accompany or join EEA national with right to reside) are met; or

(b) a family member of an EEA national, a family member who has retained the right of residence, a person who meets the criteria in paragraph (5) or a person with a right of permanent residence under regulation 15 and produces on arrival—

(**12**) OJ No L 141, 27.5.2011, p3.

(i) a valid passport; and

(ii) a valid EEA family permit, residence card, derivative residence card or permanent residence card.

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

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

(a) an EEA national;

(b) a family member of an EEA national with a right to accompany that EEA national or join that EEA national in the United Kingdom;

(c) a person who meets the criteria in paragraph (5); or

(d) a family member who has retained the right of residence or a person with a right of permanent residence under regulation 15.

(5) The criteria in this paragraph are that a person ("P")—

(a) previously resided in the United Kingdom under regulation 16(3) and would be entitled to reside in the United Kingdom under that regulation were P in the country;

(b) is accompanying an EEA national to, or joining an EEA national in, the United Kingdom and P would be entitled to reside in the United Kingdom under regulation 16(2) were P and the EEA national both in the United Kingdom;

(c) is accompanying a person ("the relevant person") to, or joining the relevant person in, the United Kingdom and—

(i) the relevant person is residing, or has resided, in the United Kingdom under regulation 16(3); and

(ii) P would be entitled to reside in the United Kingdom under regulation 16(4) were P and the relevant person both in the United Kingdom;

(d) is accompanying a person who meets the criteria in sub-paragraph (b) or (c) ("the relevant person") to the United Kingdom and—

(i) P and the relevant person are both—

(aa) seeking admission to the United Kingdom in reliance on this paragraph for the first time; or

(bb) returning to the United Kingdom having previously resided there pursuant to the same provisions of regulation 16 in reliance on which they now base their claim to admission; and

(ii) P would be entitled to reside in the United Kingdom under regulation 16(6) were P and the relevant person there; or

(e) is accompanying a British citizen to, or joining a British citizen in, the United Kingdom and P would be entitled to reside in the United Kingdom under regulation 16(5) were P and the British citizen both in the United Kingdom.

(6) Paragraph (7) applies where—

(a) a person ("P") seeks admission to the United Kingdom in reliance on paragraph (5)(b), (c) or (e); and

(b) if P were in the United Kingdom, P would have a derived right to reside under regulation 16(8)(b)(ii).

(7) Where this paragraph applies a person ("P") must only be regarded as meeting the criteria in paragraph (5)(b), (c) or (e) where P—

(a) is accompanying the person with whom P would on admission to the United Kingdom jointly share care responsibility for the purpose of regulation 16(8)(b)(ii); or

(b) has previously resided in the United Kingdom pursuant to regulation 16(2), (4) or (5) as a joint primary carer and seeks admission to the United Kingdom in order to reside there again on the same basis.

(8) But this regulation is subject to regulations 23(1), (2), (3) and (4) and 31.

[[F46](9) A person is not entitled to be admitted by virtue of this regulation where that person is subject to a decision under regulation 23(6)(b) (removal decision).**]**

Textual Amendments

F46 Reg. 11(9) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 5**

Modifications etc. (not altering text)

C1 Reg. 11 modified by S.I. 1994/1405, art. 7 (as amended) (coming into force in accordance with reg. 1(3) of the amending S.I.) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(3), **11**

C2 Reg. 11 modified by S.I. 1993/1813, Sch. 4 para. 5 (as amended) (30.9.2020) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(2), **5(9)**

C3 Reg. 11 modified (30.9.2020 immediately after the entry into force of S.I. 2020/915, **art. 5**) by The Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020 (S.I. 2020/916), arts. 1(3), **6**

Issue of EEA family permit

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

(a) the EEA national—

(i) is residing in the United Kingdom in accordance with these Regulations; or

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

(b) the family member will be accompanying the EEA national to the United Kingdom or joining the EEA national there.

(2) An entry clearance officer must issue an EEA family permit to a person who applies and provides evidence demonstrating that, at the time at which the person first intends to use the EEA family permit, the person—

(a) would be entitled to be admitted to the United Kingdom because that person would meet the criteria in regulation 11(5); and

(b) will (save in the case of a person who would be entitled to be admitted to the United Kingdom because that person would meet the criteria for admission in regulation 11(5)(a))

be accompanying to, or joining in, the United Kingdom any person from whom the right to be admitted to the United Kingdom under the criteria in regulation 11(5) is derived.

(3) An entry clearance officer must issue an EEA family permit to—

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

(b) a person who is not an EEA national but who has acquired the right of permanent residence under regulation 15.

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

(a) the relevant EEA national satisfies the condition in paragraph (1)(a);

(b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and

(c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.

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

[[F47](5A) An EEA family permit issued under this regulation may be issued in electronic form.**]**

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

(7) But an EEA family permit must not be issued under this regulation if the applicant or the EEA national concerned is not entitled to be admitted to the United Kingdom as a result of regulation 23(1), (2) or (3) or falls to be excluded in accordance with regulation 23(5).

(8) An EEA family permit must not be issued under this regulation to a person ("A") who is the spouse, civil partner or durable partner of a person ("B") where a spouse, civil partner or durable partner of A or B holds a valid EEA family permit.

Textual Amendments

F47 Reg. 12(5A) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 6**

Initial right of residence

13.—(1) An EEA national is entitled to reside in the United Kingdom for a period not exceeding three months beginning on the date of admission to the United Kingdom provided the EEA national holds a valid national identity card or passport issued by an EEA State.

(2) A person who is not an EEA national but is a family member who has retained the right of residence or the family member of an EEA national residing in the United Kingdom under paragraph (1) is entitled to reside in the United Kingdom provided that person holds a valid passport.

(3) An EEA national or the family member of an EEA national who is an unreasonable burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation.

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside under this regulation where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b) (decision to remove on grounds of public policy, public security or public health), 24(1) (refusal to issue residence documentation etc), 25(1) (cancellation of a right

of residence), 26(3) (misuse of right to reside) or 31(1) (revocation of admission), **[**[F48]or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect**]**.

Textual Amendments

F48 Words in reg. 13(4) substituted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 7**

Extended right of residence

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

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

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

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside in the United Kingdom under this regulation where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), **[**[F49]or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect**]**.

Textual Amendments

F49 Words in reg. 14(4) substituted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 8**

Right of permanent residence

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

(a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;

(b) a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;

(c) a worker or self-employed person who has ceased activity;

(d) the family member of a worker or self-employed person who has ceased activity, provided—

(i) the person was the family member of the worker or self-employed person at the point the worker or self-employed person ceased activity; and

(ii) at that point, the family member enjoyed a right to reside on the basis of being the family member of that worker or self-employed person;

(e) a person who was the family member of a worker or self-employed person where—

(i) the worker or self-employed person has died;

(ii) the family member resided with the worker or self-employed person immediately before the death; and

(iii) the worker or self-employed person had resided continuously in the United Kingdom for at least two years immediately before dying or the death was the result of an accident at work or an occupational disease;

(f) a person who—

(i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and

(ii) was, at the end of the period, a family member who has retained the right of residence.

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

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

(4) A person who satisfies the criteria in this regulation is not entitled to a right to permanent residence in the United Kingdom where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), **[**[F50]or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect**]**.

Textual Amendments

F50 Words in reg. 15(4) substituted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 9**

Derivative right to reside

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

(a) is not an exempt person; and

(b) satisfies each of the criteria in one or more of paragraphs (2) to (6).

(2) The criteria in this paragraph are that—

(a) the person is the primary carer of an EEA national; and

(b) the EEA national—

(i) is under the age of 18;

(ii) resides in the United Kingdom as a self-sufficient person; and

(iii) would be unable to remain in the United Kingdom if the person left the United Kingdom for an indefinite period.

(3) The criteria in this paragraph are that—

(a) any of the person's parents ("PP") is an EEA national who resides or has resided in the United Kingdom;

(b) both the person and PP reside or have resided in the United Kingdom at the same time, and during such a period of residence, PP has been a worker in the United Kingdom; and

(c) the person is in education in the United Kingdom.

(4) The criteria in this paragraph are that—

(a) the person is the primary carer of a person satisfying the criteria in paragraph (3) ("PPP"); and

(b) PPP would be unable to continue to be educated in the United Kingdom if the person left the United Kingdom for an indefinite period.

(5) The criteria in this paragraph are that—

(a) the person is the primary carer of a British citizen ("BC");

(b) BC is residing in the United Kingdom; and

(c) BC would be unable to reside in the United Kingdom or in another EEA State if the person left the United Kingdom for an indefinite period.

(6) The criteria in this paragraph are that—

(a) the person is under the age of 18;

(b) the person does not have leave to enter, or remain in, the United Kingdom under the 1971 Act **[**[F51](but see paragraph (7A))**]**;

(c) the person's primary carer is entitled to a derivative right to reside in the United Kingdom under paragraph (2), (4) or (5); and

(d) the primary carer would be prevented from residing in the United Kingdom if the person left the United Kingdom for an indefinite period.

(7) In this regulation—

(a) "education" excludes nursery education but does not exclude education received before the compulsory school age where that education is equivalent to the education received at or after the compulsory school age;

(b) "worker" does not include a jobseeker or a person treated as a worker under regulation 6(2);

(c) an "exempt person" is a person—

(i) who has a right to reside under another provision of these Regulations;

(ii) who has the right of abode under section 2 of the 1971 Act(**13**);

(iii) to whom section 8 of the 1971 Act(**14**), or an order made under subsection (2) of that section(**15**), applies; or

(iv) who has indefinite leave to enter or remain in the United Kingdom **[**[F52](but see paragraph (7A))**]**.

[[F53](7A) Leave to enter, or remain in, the United Kingdom under the 1971 Act which has been granted by virtue of Appendix EU to the immigration rules is not to be treated as leave for the purposes of paragraph (6)(b) or (7)(c)(iv).**]**

(8) A person is the "primary carer" of another person ("AP") if—

(a) the person is a direct relative or a legal guardian of AP; and

(b) either—

(i) the person has primary responsibility for AP's care; or

(ii) shares equally the responsibility for AP's care with one other person[F54]....

(9) In paragraph (2)(b)(iii), (4)(b) or (5)(c), if the role of primary carer is shared with another person in accordance with paragraph (8)(b)(ii), the words "the person" are to be read as "both primary carers".

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

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

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

(10) Paragraph (9) does not apply if the person with whom care responsibility is shared acquired a derivative right to reside in the United Kingdom as a result of this regulation prior to the other person's assumption of equal care responsibility.

(11) A person is not be regarded as having responsibility for another person's care for the purpose of paragraph (8) on the sole basis of a financial contribution towards that person's care.

(12) A person does not have a derivative right to reside where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

Textual Amendments

F51 Words in reg. 16(6)(b) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(6)(a)**

F52 Words in reg. 16(7)(c)(iv) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(6)(b)**

F53 Reg. 16(7A) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(6)(c)**

F54 Words in reg. 16(8)(b)(ii) omitted (24.7.2018) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 10**

PART 3

RESIDENCE DOCUMENTATION

Issue of registration certificate

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

(a) a valid national identity card or passport issued by an EEA State; and

(b) proof that the applicant is a qualified person.

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

(3) The Secretary of State must issue a registration certificate to an EEA national who is the family member of a qualified person or of an EEA national with a right of permanent residence under regulation 15 immediately on application and production of—

(a) a valid national identity card or passport issued by an EEA State; and

(b) proof that the applicant is such a family member.

(4) The Secretary of State must issue a registration certificate to an EEA national who is a family member who has retained the right of residence on application and production of—

(a) a valid national identity card or passport; and

(b) proof that the applicant is a family member who has retained the right of residence.

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

(a) the application is accompanied or joined by a valid national identity card or passport;

(b) the relevant EEA national is a qualified person or an EEA national with a right of permanent residence under regulation 15; and

(c) in all the circumstances it appears to the Secretary of State appropriate to issue the registration certificate.

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

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

(8) A registration certificate is—

(a) proof of the holder's right to reside on the date of issue;

(b) no longer valid if the holder ceases to have a right to reside under these Regulations;

(c) invalid if the holder never had a right to reside under these Regulations.

(9) This regulation is subject to regulations 24 (refusal to issue or renew and revocation of residence documentation) and 25 (cancellation of a right of residence).

Issue of residence card

18.—(1) The Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person or of an EEA national with a right of permanent residence under regulation 15 on application and production of—

(a) a valid passport; and

(b) proof that the applicant is such a family member.

(2) The Secretary of State must issue a residence card to a person who is not an EEA national but who is a family member who has retained the right of residence on application and production of—

(a) a valid passport; and

(b) proof that the applicant is a family member who has retained the right of residence.

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

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

(a) the application is accompanied or joined by a valid passport;

(b) the relevant EEA national is a qualified person or an EEA national with a right of permanent residence under regulation 15; and

(c) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.

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

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

(a) five years from the date of issue; or

(b) in the case of a residence card issued to the family member or extended family member of a qualified person, the envisaged period of residence in the United Kingdom of the qualified person,

whichever is the shorter.

(7) A residence card—

(a) must be called "Residence card of a family member of **[**[F55]a Union citizen**]**";

(b) is proof of the holder's right to reside on the date of issue;

(c) is no longer valid if the holder ceases to have a right to reside under these Regulations;

(d) is invalid if the holder never had a right to reside under these Regulations.

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

Textual Amendments

F55 Words in reg. 18(7)(a) substituted (31.1.2017) by The Immigration (European Economic Area) (Amendment) Regulations 2017 (S.I. 2017/1), reg. 1(2), **Sch. para. 1**

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

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

(a) a valid national identity card or passport issued by an EEA State; and

(b) proof that the EEA national has a right of permanent residence.

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

(a) a valid passport; and

(b) proof that the person has a right of permanent residence.

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

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

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

(b) no longer valid if the holder ceases to have a right of permanent residence under regulation 15;

(c) invalid if the holder never had a right of permanent residence under regulation 15.

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

Issue of a derivative residence card

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

(a) a valid national identity card issued by an EEA State or a valid passport; and

(b) proof that the applicant has a derivative right to reside under regulation 16.

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

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

(a) the date five years from the date of issue; or

(b) any earlier date specified by the Secretary of State when issuing the derivative residence card.

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

(5) A derivative residence card is—

(a) proof of the holder's derivative right to reside on the day of issue;

(b) no longer valid if the holder ceases to have a derivative right to reside under regulation 16;

(c) invalid if the holder never had a derivative right to reside under regulation 16.

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

Procedure for applications for documentation under this Part and regulation 12

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

(a) online, submitted electronically using the relevant pages of www.gov.uk; or

(b) by post or in person, using the relevant application form specified by the Secretary of State on www.gov.uk.

(2) All applications must—

(a) be accompanied [F56]... by the evidence or proof required by this Part or regulation 12, as the case may be, as well as that required by paragraph **[**[F57](5)**]**, within the time specified by the Secretary of State on www.gov.uk; and

(b) be complete.

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

(4) When an application is submitted otherwise than in accordance with the requirements in this regulation, it is invalid **[**[F58]and must be rejected**]**.

[[F59](4A) An application for documentation under this Part, or for an EEA family permit under regulation 12, is invalid where the person making the application is subject to a removal decision made under regulation 23(6)(b), a deportation order made under regulation 32(3) or an exclusion order made under regulation 23(5).**]**

(5) Where an application for documentation under this Part is made by a person who is not an EEA national on the basis that the person is or was the family member of an EEA national or an extended family member of an EEA national, the application must be accompanied [F60]... by a valid national identity card or passport in the name of that EEA national.

(6) Where—

(a) there are circumstances beyond the control of an applicant for documentation under this Part; and

(b) as a result, the applicant is unable to comply with the requirements to submit an application online or using the application form specified by the Secretary of State,

the Secretary of State may accept an application submitted by post or in person which does not use the relevant application form specified by the Secretary of State.

Textual Amendments

F56 Words in reg. 21(2)(a) omitted (24.7.2018) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 11(a)**

F57 Word in reg. 21(2)(a) substituted (31.1.2017) by The Immigration (European Economic Area) (Amendment) Regulations 2017 (S.I. 2017/1), reg. 1(2), **Sch. para. 2**

F58 Words in reg. 21(4) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(8)**

F59 Reg. 21(4A) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 11(b)**

F60 Words in reg. 21(5) omitted (24.7.2018) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 11(c)**

Verification of a right of residence

22.—(1) This regulation applies where the Secretary of State—

(a) has reasonable doubt as to whether a person ("A") has a right to reside or a derivative right to reside; or

(b) wants to verify the eligibility of a person ("A") to apply for an EEA family permit or documentation issued under Part 3.

(2) Where this regulation applies, the Secretary of State may invite A to—

(a) provide evidence to support the existence of a right to reside or a derivative right to reside (as the case may be), or to support an application for an EEA family permit or documentation under this Part; or

(b) attend an interview with the Secretary of State.

(3) If A purports to have a right to reside on the basis of a relationship with another person ("B"), (including, where B is a British citizen, through having lived with B in another EEA State), the Secretary of State may invite B to—

(a) provide information about their relationship or residence in another EEA State; or

(b) attend an interview with the Secretary of State.

(4) If without good reason A or B (as the case may be)—

(a) fails to provide the information requested;

(b) on at least two occasions, fails to attend an interview if so invited;

the Secretary of State may draw any factual inferences about A's entitlement to a right to reside as appear appropriate in the circumstances.

(5) The Secretary of State may decide following the drawing of an inference under paragraph (4) that A does not have or ceases to have a right to reside.

(6) But the Secretary of State must not decide that A does not have or ceases to have a right to reside on the sole basis that A failed to comply with this regulation.

(7) This regulation may not be invoked systematically.

PART 4

REFUSAL OF ADMISSION AND REMOVAL ETC

Exclusion and removal from the United Kingdom

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

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

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

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

(a) that person is accompanying the EEA national or joining the EEA national in the United Kingdom; and

(b) the EEA national has a right to reside.

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

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

(a) that person does not have or ceases to have a right to reside under these Regulations;

(b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 27; or

(c) the Secretary of State has decided that the person's removal is justified on grounds of misuse of rights under regulation 26(3).

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

(a) as the automatic consequence of having recourse to the social assistance system of the United Kingdom; or

(b) if that person has leave to remain in the United Kingdom under the 1971 Act unless that person's removal is justified on the grounds of public policy, public security or public health in accordance with regulation 27.

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

(a) until the order is revoked; or

(b) for the period specified in the order.

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

Modifications etc. (not altering text)

C4 Reg. 23 modified (30.9.2020 immediately after the entry into force of S.I. 2020/915, art. 5) by The Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020 (S.I. 2020/916), arts. 1(3), **6**

C5 Reg. 23 modified by S.I. 1994/1405, art. 7 (as amended) (coming into force in accordance with reg. 1(3) of the amending S.I.) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(3), **11**

C6 Reg. 23 modified by S.I. 1993/1813, Sch. 4 para. 5 (as amended) (30.9.2020) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(2), **5(9)**

Refusal to issue or renew and revocation of residence documentation

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

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

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

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

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

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

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

(6) An entry clearance officer **[**[F61]or an immigration officer**]** may at any time revoke a person's EEA family permit**[**[F62], including one issued in electronic form,**]** if—

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

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

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

Textual Amendments

F61 Words in reg. 24(6) inserted (31.1.2017) by The Immigration (European Economic Area) (Amendment) Regulations 2017 (S.I. 2017/1), reg. 1(2), **Sch. para. 3**

F62 Words in reg. 24(6) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 12**

Modifications etc. (not altering text)

C7 Reg. 24 modified (30.9.2020 immediately after the entry into force of S.I. 2020/915, art. 5) by The Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020 (S.I. 2020/916), arts. 1(3), **6**

C8 Reg. 24 modified by S.I. 1994/1405, art. 7 (as amended) (coming into force in accordance with reg. 1(3) of the amending S.I.) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(3), **11**

C9 Reg. 24 modified by S.I. 1993/1813, Sch. 4 para. 5 (as amended) (30.9.2020) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(2), **5(9)**

Cancellation of a right of residence

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

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

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

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

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

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

Misuse of a right to reside

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

(a) observes the requirements of these Regulations in circumstances which do not achieve the purpose of these Regulations (as determined by reference to Council Directive 2004/38/EC(**16**) and the EU Treaties); and

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

(2) Such misuse includes attempting to enter the United Kingdom within 12 months of being removed under regulation 23(6)(a), where the person attempting to do so is unable to provide evidence that, upon re-entry to the United Kingdom, the conditions for a right to reside, other than the initial right of residence under regulation 13, will be met.

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

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

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

(6) This regulation may not be invoked systematically.

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

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

(**16**) OJ No. L 158, 30.4.04, p77.

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

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

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

(a) **[**[F63]has a right of permanent residence under regulation 15 and who**]** has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989(**17**).

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

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision;

(f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person ("P") who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of residence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

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

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010(**18**); or

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

does not constitute grounds for the decision.

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

(**17**) Treaty Series No. 44 (1992) Cmd 1976 at http://treaties.fco.gov.uk/docs/pdf/1992/TS0044.pdf.
(**18**) S.I. 2010/659.

Textual Amendments

F63 Words in reg. 27(4)(a) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 13**

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

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

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

(b) holds a derivative residence card; or

(c) has applied for a derivative residence card.

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

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

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

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

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

PART 5

PROCEDURE IN RELATION TO EEA DECISIONS

Person claiming right of admission

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

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

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

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

(iii) has a derivative right to reside;

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

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

(b) an EEA national, where there is reason to believe that the EEA national may be a person to whom regulation 23(1), (2), (3) or (4) applies; or

(c) a person to whom regulation 41 applies (temporary admission to submit case in person).

(2) A person to whom this regulation applies is to be treated as if that person were a person seeking leave to enter the United Kingdom under the 1971 Act for the purposes of paragraphs 2, 3,

4, 7 **[**[F64]and 16 to 18A**]** of Schedule 2 to the 1971 Act (administrative provisions as to control on entry etc)(**19**), except that—

(a) the reference in paragraph 2(1) to the purpose for which the immigration officer may examine any persons who have arrived in the United Kingdom is to be read as a reference to the purpose of determining whether the person is to be granted admission under these Regulations;

(b) the references in paragraphs 3, 7 and 16(1) to a person who is, or may be, given leave to enter are to be read as references to a person who is, or may be, granted admission under these Regulations; and

(c) a medical examination is not to be carried out under paragraph 2 or paragraph 7 as a matter of routine and may only be carried out within three months of the person's arrival in the United Kingdom.

[[F65](3) For so long as a person to whom this regulation applies is detained under the powers conferred by Schedule 2 to the 1971 Act, or granted bail under Schedule 10 to the 2016 Act whilst liable to be detained under the powers conferred by Schedule 2 to the 1971 Act, the person is deemed not to have been admitted to the United Kingdom.**]**

Textual Amendments

F64 Words in reg. 29(2) substituted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(3)(a)**

F65 Reg. 29(3) substituted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(3)(b)**

Person refused admission

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

(a) because that person does not meet the requirements of regulation 11 (including where that person does not meet those requirements because that person's EEA family permit, residence card, derivative residence card or permanent residence card has been revoked by an immigration officer in accordance with regulation 24); or

(b) in accordance with regulation 23(1), (2), (3) or (4).

(2) A person to whom this regulation applies, is to be treated as if the person were a person refused leave to enter under the 1971 Act for the purpose of paragraphs 8, 10, 10A, 11 **[**[F66]and 16 to 19**]** of Schedule 2 to the 1971 Act(**20**)**[**[F67](and the provisions of Schedule 10 to the 2016 Act apply

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

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

accordingly)**]**, except that the reference in paragraph 19 to a certificate of entitlement, entry clearance or work permit is to be read as a reference to an EEA family permit, residence card, derivative residence card, a qualifying EEA State residence card, or a permanent residence card.

Textual Amendments

F66 Words in reg. 30(2) substituted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(4)(a)**

F67 Words in reg. 30(2) inserted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(4)(b)**

Revocation of admission

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

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

(a) to that person's examination under paragraph 2 of Schedule 2 to the 1971 Act were to that paragraph as applied by regulation 29(2)(a) and (c);

(b) to notices of leave to enter the United Kingdom were to a decision to admit that person to the United Kingdom under these Regulations; and

(c) to the cancellation of such a notice and the refusal of leave to enter were to revocation of the decision to admit that person to the United Kingdom under this regulation.

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

Person subject to removal

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

(2) Where a decision is taken to remove a person under regulation 23(6)(a) or (c), the person is to be treated as if the person were a person to whom section 10(1) of the 1999 Act(**21**) applies, and section 10 of that Act (removal of certain persons unlawfully in the United Kingdom) is to apply accordingly.

(3) Where a decision is taken to remove a person under regulation 23(6)(b), the person is to be treated as if the person were a person to whom section 3(5)(a) of the 1971 Act(**22**) (liability to

1 and 2(1), Schedule 2, paragraphs 1 and 4, and Schedule 9, paragraph 1, the Immigration Act 2016, sections 5, 9 and 60, and S.I. 2010/21, Schedule 1, paragraphs 1 and 2.

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

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

deportation) applies, and section 5 of that Act(**23**) (procedure for deportation) and Schedule 3 to that Act(**24**) (supplementary provision as to deportation) are to apply accordingly.

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

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

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

(a) in duly substantiated cases of urgency;

(b) where the person is detained pursuant to the sentence or order of any court;

(c) where the person is a person to whom paragraph (4) applies.

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

(a) has ceased to have a derivative right to reside; or

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

Human rights considerations and interim orders to suspend removal

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

(a) P has not appealed against the EEA decision to which regulation 32(3) applies, but would be entitled, and remains within time, to do so from within the United Kingdom (ignoring any possibility of an appeal out of time with permission); or

(b) P has so appealed but the appeal has not been finally determined.

(2) The Secretary of State may only give directions for P's removal if the Secretary of State certifies that, despite the appeals process not having been begun or not having been finally determined, removal of P to the country or territory to which P is proposed to be removed, pending the outcome of P's appeal, would not be unlawful under section 6 of the Human Rights Act 1998(**25**) (public authority not to act contrary to Human Rights Convention).

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

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

(**25**) 1998 c. 42; section 6 was amended by the Constitutional Reform Act 2005 (c. 4), section 40, Schedule 9, paragraph 66, and Schedule 18, Part 5.

(3) The grounds upon which the Secretary of State may certify a removal under paragraph (2) include (in particular) that P would not, before the appeal is finally determined, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed.

(4) If P applies to the appropriate court or tribunal (whether by means of judicial review or otherwise) for an interim order to suspend enforcement of the removal decision, P may not be removed from the United Kingdom until such time as the decision on the interim order has been taken, except—

(a) where the removal decision is based on a previous judicial decision;

(b) where P has had previous access to judicial review; or

(c) where the removal decision is based on imperative grounds of public security.

(5) In this regulation, "finally determined" has the same meaning as in Part 6.

Revocation of deportation and exclusion orders

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

(2) A deportation order remains in force—

(a) until the order is revoked under this regulation; or

(b) for the period specified in the order.

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

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

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

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

PART 6

APPEALS UNDER THESE REGULATIONS

Interpretation of Part 6

35.—(1) In this Part—

"the 1997 Act" means the Special Immigration Appeals Commission Act 1997(**26**);

"Commission" has the same meaning as in the 1997 Act.

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

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

(**26**) 1997 c. 68.

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

Appeal rights

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

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

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

(a) a valid passport; and

(b) either—

(i) an EEA family permit; or

(ii) sufficient evidence to satisfy the Secretary of State that the person is in a relationship with the EEA national.

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

(a) a valid passport; and

(b) either—

(i) an EEA family permit

(ii) a qualifying EEA State residence card;

(iii) in the case of a person claiming to be the family member of an EEA national, **[**[F68]proof that the definition of "family member" in regulation 7(1) is met**]**; [F69]...

(iv) in the case of a person claiming to be a family member who has retained the right of residence, **[**[F70]proof that the definition of "family member who has retained the right of residence" in regulation 10(1) is met; or**]**

[[F71](v) in the case of a person claiming to be the relative of an EEA national who is an extended family member, proof that the definition of "extended family member" in regulation 8(1) is met.**]**

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

(a) an EEA family permit; or

(b) where P claims to have a derivative right to reside as a result of—

(i) regulation 16(2), proof that P is a direct relative or legal guardian of an EEA national who is under the age of 18;

(ii) regulation 16(3), proof that P is the child of an EEA national;

(iii) regulation 16(4), proof that P is a direct relative or legal guardian of the child of an EEA national;

(iv) regulation 16(5), proof that P is a direct relative or legal guardian of a British citizen;

(v) regulation 16(6), proof that P is under the age of 18 and is a dependant of a person satisfying the criteria in paragraph (i), (iii) or (iv).

(6) If a person claims to be entitled to a right to reside under regulation 9 (family members **[**[F72]or extended family members**]** of British citizens), that person may not appeal without producing a valid passport and either—

(a) an EEA family permit; or

(b) **[**[F73]in respect of a family member,**]** a qualifying EEA State residence card; and

(i) proof that the criteria to be a family member of the British citizen are met; and

(ii) proof that the British citizen is residing, or did reside, in another EEA State as a worker, self-employed person, self-sufficient person or student.

[[F74](c) in respect of an extended family member—

[F75](i) . . . . . .

(ii) proof that—

(aa) the condition in regulation 9(1A)(b) is met;

(bb) the criteria to be **[**[F76]an extended family member**]** of the British citizen are met, and

(cc) the British citizen is residing, or did reside, in another EEA State as a worker, self-employed person, self-sufficient person or a student.**]**

(7) The Secretary of State or an immigration officer may certify a ground for the purposes of paragraph (8) if it has been considered in a previous appeal brought under these Regulations or under section 82(1) of the 2002 Act(**27**) .

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

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

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

(11) Nothing in this Part prevents a person who has a right of appeal under this regulation from appealing to the First-tier Tribunal under section 82(1) of the 2002 Act (right of appeal to the Tribunal), or, where relevant, to the Commission pursuant to section 2 of the 1997 Act (jurisdiction of the Commission: appeals)(**28**), provided the criteria for bringing such an appeal under those Acts are met.

[[F77](12) Where there is a requirement under this regulation to produce an EEA family permit—

(a) where notice of appeal is given electronically, the permit may be produced either in paper or electronic form;

(b) in all other cases, the permit must be produced in paper form.**]**

Textual Amendments

F68 Words in reg. 36(4)(b)(iii) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(9)(a)(i)(aa)**

F69 Word in reg. 36(4)(b)(iii) omitted (15.8.2019) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(9)(a)(i)(bb)**

(**27**) Section 82(1) was amended by the Immigration Act 2014, section 15.

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

F70 Words in reg. 36(4)(b)(iv) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(9)(a)(ii)**

F71 Reg. 36(4)(b)(v) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(9)(a)(iii)**

F72 Words in reg. 36(6) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(7)(a)**

F73 Words in reg. 36(6)(b) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(7)(b)**

F74 Reg. 36(6)(c) inserted (28.3.2019) by The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(7)(c)**

F75 Reg. 36(6)(c)(i) omitted (15.8.2019) by virtue of The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(9)(b)(i)**

F76 Words in reg. 36(6)(c)(ii)(bb) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(9)(b)(ii)**

F77 Reg. 36(12) inserted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 14**

Out of country appeals

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

(a) to refuse to admit that person to the United Kingdom;

(b) to revoke that person's admission to the United Kingdom;

(c) to make an exclusion order against that person;

(d) to refuse to revoke a deportation or exclusion order made against the person;

(e) to refuse to issue the person with an EEA family permit;

(f) to revoke, or to refuse to issue or renew any document under these Regulations where that decision is taken at a time when the person is outside the United Kingdom; or

(g) to remove the person from the United Kingdom following entry to the United Kingdom in breach of a deportation or exclusion order, or in circumstances where that person was not entitled to be admitted pursuant to regulation 23(1), (2), (3) or (4).

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

[[F78](a) the person, not being a person who is deemed not to have been admitted to the United Kingdom under regulation 29(3)—

(i) holds a valid EEA family permit, registration certificate, residence card, derivative residence card, document certifying permanent residence, permanent residence card or qualifying EEA State residence card on arrival in the United Kingdom; or

(ii) can otherwise prove that the person is resident in the United Kingdom; or**]**

(b) the person is deemed not to have been admitted to the United Kingdom under regulation 29(3) but at the date on which notice of the decision to refuse admission is given the person has been in the United Kingdom for at least 3 months.

Textual Amendments

F78 Reg. 37(2)(a) substituted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 15** (with reg. 4)

Appeals to the Commission

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

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

(a) by the Secretary of State wholly or partly on a ground listed in paragraph (3); or

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

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

(a) in the interests of national security; or

(b) in the interests of the relationship between the United Kingdom and another country.

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

(a) in the interests of national security;

(b) in the interests of the relationship between the United Kingdom and another country; or

(c) otherwise in the public interest.

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

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

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

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

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

National Security: EEA Decisions

39.—(1) Section 97A of the 2002 Act(**29**) applies to an appeal against an EEA decision where the Secretary of State has certified under regulation 38(2) or (4) that the EEA decision was taken in the interests of national security.

(2) Where section 97A so applies, it has effect as if—

(a) the references in that section to a deportation order were to an EEA decision;

(b) subsections (1), (1A), (2)(b) and (4) were omitted;

(c) the reference in subsection (2)(a) to section 79 were a reference to regulations 37(2) and 40 of these Regulations; and

(d) in subsection (2A) for sub-paragraphs (a) and (b), "against an EEA decision" were substituted.

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

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

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

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

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

(4) The provisions of Part 1 of Schedule 2, or as the case may be, Schedule 3 to the 1971 Act concerning detention and persons liable to detention, apply to a person appealing against a refusal of admission, a decision to revoke admission, or a removal decision as if there were in force directions for that person's removal from the United Kingdom, except that the person may not be detained on board a ship or aircraft so as to compel that person to leave the United Kingdom while the appeal is pending **[**[F79]and the provisions of Schedule 10 to the 2016 Act apply accordingly**]**.

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

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

(a) the giving of directions under that paragraph for the removal of a person from the United Kingdom; and

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

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

[F80](7) . . . . . .

Textual Amendments

F79 Words in reg. 40(4) inserted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(5)(a)**

F80 Reg. 40(7) omitted (15.1.2018) by virtue of The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(5)(b)**

Temporary admission to submit case in person

41.—(1) This regulation applies where—

(a) a person ("P") is subject to a decision to remove made under regulation 23(6)(b);

(b) P has appealed against the decision referred to in sub-paragraph (a);

(c) a date for P's appeal has been set by the First-tier Tribunal or Upper Tribunal;

(d) P wants to make submissions before the First-tier Tribunal or Upper Tribunal in person; and

(e) P is outside the United Kingdom.

(2) P may apply to the Secretary of State for permission to be temporarily admitted [F81]... to the United Kingdom in order to make submissions in person.

(3) The Secretary of State must grant P permission, except when P's appearance may cause serious troubles to public policy or public security.

(4) When determining when P is entitled to be given permission, and the duration of P's temporary admission should permission be granted, the Secretary of State must have regard to the dates upon which P will be required to make submissions in person.

(5) Where—

(a) P is temporarily admitted to the United Kingdom pursuant to this regulation;

(b) a hearing of P's appeal has taken place; and

(c) the appeal is not finally determined,

P may be removed from the United Kingdom pending the remaining stages of the appeal (but P may apply to return to the United Kingdom to make submissions in person during the remaining stages of the appeal in accordance with this regulation).

(6) Where the Secretary of State grants P permission to be temporarily admitted to the United Kingdom under this regulation, upon such admission P is to be treated as if P were a person refused leave to enter under the 1971 Act for the purposes of paragraphs 8, 10, 10A, 11 **[**[F82]and 16 to 18A**]** of Schedule 2 to the 1971 Act **[**[F83]and the provisions of Schedule 10 to the 2016 Act apply accordingly**]**.

(7) Where Schedule 2 to the 1971 Act so applies, it has effect as if—

(a) the reference in paragraph 8(1) to leave to enter were a reference to admission to the United Kingdom under these Regulations; and

(b) the reference in paragraph 16(1) to detention pending a decision regarding leave to enter or remain in the United Kingdom were to detention pending submission of P's case in person in accordance with this regulation.

(8) P is deemed not to have been admitted to the United Kingdom during any time during which P is temporarily admitted pursuant to this regulation.

[[F84](9) For the purposes of this regulation, a person ("P") is temporarily admitted to the United Kingdom if P is admitted on bail under Schedule 10 to the 2016 Act without having otherwise been admitted, and the expression temporary admission is to be construed accordingly.**]**

Textual Amendments

F81 Words in reg. 41(2) omitted (15.1.2018) by virtue of The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(6)(a)**

F82 Words in reg. 41(6) substituted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(6)(b)(i)**

F83 Words in reg. 41(6) inserted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(6)(b)(ii)**

F84 Reg. 41(9) inserted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(6)(c)**

Alternative evidence of identity and nationality

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

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

PART 7

GENERAL

Effect on other legislation

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

Substitution of regulation 9 of the 2006 Regulations

44. Schedule 5 (transitory provisions) has effect.

Revocations, savings, transitory and transitional provisions and consequential modifications

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

Revocation of regulation 44 and Schedule 5

46. The following are revoked—

(a) regulation 44;

(b) Schedule 5.

Robert Goodwill
Minister of State
Home Office

SCHEDULE 1

Regulation 27

CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.

Considerations of public policy and public security

1. The EU Treaties do not impose a uniform scale of public policy or public security values: member States enjoy considerable discretion, acting within the parameters set by the EU Treaties, applied where relevant by the EEA agreement, to define their own standards of public policy and public security, for purposes tailored to their individual contexts, from time to time.

Application of paragraph 1 to the United Kingdom

2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.

4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as—

(a) the commission of a criminal offence;

(b) an act otherwise affecting the fundamental interests of society;

(c) the EEA national or family member of an EEA national was in custody.

5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.

6. It is consistent with public policy and public security requirements in the United Kingdom that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including—

(a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or

(b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

The fundamental interests of society

7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include—

(a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area;

(b) maintaining public order;

(c) preventing social harm;

(d) preventing the evasion of taxes and duties;

(e) protecting public services;

(f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;

(g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);

(h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27);

(i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;

(j) protecting the public;

(k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);

(l) countering terrorism and extremism and protecting shared values.

SCHEDULE 2

Regulation 36

APPEALS TO THE FIRST-TIER TRIBUNAL

1. The following provisions of, or made under, the 2002 Act have effect in relation to an appeal under these Regulations to the First-tier Tribunal as if it were an appeal against a decision of the Secretary of State under section 82(1) of the 2002 Act (right of appeal to the Tribunal)—

section 84 (grounds of appeal)(**30**), as though the sole permitted grounds of appeal were that the decision breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom ("an EU ground of appeal");

section 85 (matters to be considered)(**31**), as though—

(a) the references to a statement under section 120 of the 2002 Act(**32**) include, but are not limited to, a statement under that section as applied by paragraph 2; and

(b) a "matter" in subsection (2) and a "new matter" in subsection (6) include a ground of appeal of a kind listed in section 84 of the 2002 Act and an EU ground of appeal;

section 86 (determination of appeal)(**33**);

section 105(**34**) and any regulations made under that section; and

section 106(**35**) and any rules made pursuant to that section.

(**30**) Section 84 was amended by the Immigration Act 2014 ("the 2014 Act"), section 15.
(**31**) Section 85 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, section 26(7) and Schedule 2, paragraphs 16 and 18, and the 2014 Act, section 15 and Schedule 9, paragraphs 30 and 34.
(**32**) Section 120 was amended by the 2014 Act, Schedule 9, paragraphs 30 and 55.
(**33**) Section 86 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, section 26(7) and Schedule 2, paragraphs 16 and 18, and the 2014 Act, section 15 and Schedule 9, paragraphs 30 and 36.
(**34**) Section 105 was amended by the 2014 Act, Schedule 9, paragraphs 30 and 48.
(**35**) Section 106 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, section 26(7), Schedule 2, paragraphs 16 and 21,and Schedule 4, the 2014 Act, Schedule 9, paragraphs 30 and 49(b), and S.I. 2010/21, Schedule 1, paragraphs 20 and 27.

2.—(1) Section 92(3) of the 2002 Act(**36**) has effect as though an additional basis upon which an appeal under section 82(1)(b) of that Act (human rights claim appeal) must be brought from outside the United Kingdom were that—

(a) the claim to which that appeal relates arises from an EEA decision or the consequences of an EEA decision; and

(b) the removal of that person from the United Kingdom has been certified under regulation 33 (human rights considerations and interim orders to suspend removal).

(2) Section 120 of the 2002 Act applies to a person ("P") if an EEA decision has been taken or may be taken in respect of P and, accordingly, the Secretary of State or an immigration officer may by notice require a statement from P under subsection (2) of that section, and that notice has effect for the purpose of section 96(2) of the 2002 Act(**37**).

(3) Where section 120 of the 2002 Act so applies, it has effect as though—

(a) subsection (3) also provides that a statement under subsection (2) need not repeat reasons or grounds relating to the EEA decision under challenge previously advanced by P;

(b) subsection (5) also applies where P does not have a right to reside.

(4) For the purposes of an appeal brought under section 82(1) of the 2002 Act, subsections (2) and (6)(a) of section 85 (matters to be considered) have effect as though section 84 included a ground of appeal that the decision appealed against breaches the appellant's right under the EU Treaties in respect of entry into or residence in the United Kingdom.

3. Tribunal Procedure Rules made under section 22 of the Tribunals, Courts and Enforcement Act 2007(**38**) have effect in relation to appeals under these Regulations.

SCHEDULE 3

Regulation 43

EFFECT ON OTHER LEGISLATION

Leave under the 1971 Act

1. 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 do not have effect for as long as the person has that right to reside.

Person not subject to restriction on the period for which they may remain

2.—(1) For the purposes of the 1971 Act and British Nationality Act 1981, a person who has a right of permanent residence under regulation 15 must 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 the person may remain.

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

(**36**) Section 92(3) was amended by the 2014 Act, section 17.
(**37**) Section 96(2) was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, section 30, and the 2014 Act, Schedule 9, paragraphs 30 and 41.
(**38**) 2007 c. 15.

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 (charges in respect of passenger without proper documents)(**39**), "a visa of the required kind" includes an EEA family permit, a residence card, a derivative residence card, a qualifying EEA State residence card, or a permanent residence card required for admission under regulation 11(2), or permission to be temporarily admitted under regulation 41.

SCHEDULE 4 Regulation 45

REVOCATIONS AND SAVINGS

PART 1

Table of Revocations

1.—(1) The Regulations listed in column 1 of the table are revoked.

(2) Sub-paragraph (1) is subject to the savings and transitory provisions in Part 2 of this Schedule and the transitional provisions in Schedule 6.

Table of revocations

(1)	*(2)*
Regulations revoked	*References*
The Immigration (European Economic Area) Regulations 2006	S.I. 2006/1003
The Immigration (European Economic Area) (Amendment) Regulations 2009	S.I. 2009/1117
The Immigration (European Economic Area) (Amendment) Regulations 2011	S.I. 2011/1247
The Immigration (European Economic Area) (Amendment) Regulations 2012	S.I. 2012/1547
The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012	S.I. 2012/2560
The Immigration (European Economic Area) (Amendment) Regulations 2013	S.I. 2013/1391
The Immigration (Economic Area Regulations) (Amendment) (No. 2) Regulations 2013	S.I. 2013/3032
The Immigration (European Economic Area) (Amendment) Regulations 2014	S.I. 2014/1451
The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2014	S.I. 2014/1976
The Immigration (European Economic Area) (Amendment) (No. 3) Regulations 2014	S.I. 2014/2761

(**39**) Section 40(1)(b) was amended by the 2002 Act, Schedule 8, paragraphs 1 and 13.

(1)	*(2)*
Regulations revoked	*References*
The Immigration (European Economic Area) (Amendment) Regulations 2015	S.I. 2015/694

PART 2

Savings and modifications

Accession member States: savings and modifications

2.—(1) Regulations 7A and 7B of the 2006 Regulations (arrangements for accession member States) continue to have effect in relation to any EEA national to whom they applied immediately before 1st February 2017.

(2) Where regulations 7A and 7B continue to have effect—

(a) they do so with the following modifications—

(i) in paragraph (3) of regulation 7A and paragraph (4) of regulation 7B, as though the references to treating periods of involuntary unemployment duly recorded by the relevant employment office as periods of work for the purposes of regulation 5(7)(c) of the 2006 Regulations were to treating such periods of involuntary unemployment as periods of work for the purposes of regulation 6(2) of these Regulations; and

(ii) as though the references to regulations 6(2) (persons who continue to be treated as a worker) and 15 (right of permanent residence) were references to those provisions in these Regulations; and

(b) these Regulations have effect save that regulation 17 (issue of registration certificate) has effect as though, in paragraph (9), for "regulation 24" there were substituted "regulations 7A and 7B of the 2006 Regulations and regulation 24 of these Regulations".

[[F85]Appeals

3.—(1) Notwithstanding the revocation of the 2006 Regulations by paragraph 1(1), those Regulations continue to apply—

(a) in respect of an appeal under those Regulations against an EEA decision which is pending (within the meaning of regulation 25(2) of the 2006 Regulations) on 31st January 2017;

(b) in a case where a person has, on 31st January 2017, a right under those Regulations to appeal against an EEA decision.

(2) For the purposes of this paragraph, "EEA decision" has the meaning given in regulation 2 of the 2006 Regulations and the definition of "EEA decision" in regulation 2 of these Regulations does not apply.**]**

Textual Amendments

F85 Sch. 4 para. 3 inserted (31.1.2017) by The Immigration (European Economic Area) (Amendment) Regulations 2017 (S.I. 2017/1), reg. 1(2), **Sch. para. 4**

[F86]SCHEDULE 5

Regulation 44

. . . . . .

Textual Amendments

F86 Sch. 5 revoked (1.2.2017) by The Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052), regs. 1(2)(b), **46**

SCHEDULE 6

Regulation 45

TRANSITIONAL PROVISIONS

Interpretation

1.—(1) In this Schedule, "permission to be temporarily admitted in order to make submissions in person" means—

(a) in relation to the 2006 Regulations, permission to be temporarily admitted under regulation 29AA(2) of the 2006 Regulations;

(b) in relation to these Regulations, permission to be temporarily admitted under regulation 41(2).

(2) References to documents applied for or issued under the 2006 Regulations are to those documents as defined in regulation 2(1) of the 2006 Regulations.

Existing documents

2.—(1) An EEA family permit issued under regulation 12 of the 2006 Regulations before 1st February 2017 is to be treated as an EEA family permit issued under regulation 12 of these Regulations.

(2) Any document issued or treated as though issued under Part 3 of the 2006 Regulations is to be treated as though issued under Part 3 of these Regulations.

(3) Nothing in this paragraph extends the validity of any document issued under the 2006 Regulations beyond that document's original period of validity.

Verification of a right of residence

3. Where, before 1st February 2017, the Secretary of State had invited a person to provide evidence or information or to attend an interview under regulation 20B of the 2006 Regulations (verification of a right of residence), the Secretary of State's invitation is to be treated as though made under regulation 22 of these Regulations.

Outstanding applications

4.—(1) An application for—

(a) an EEA family permit;

(b) a registration certificate;

(c) a residence card;

(d) a document certifying permanent residence;

(e) a permanent residence card;

(f) a derivative residence card; or

(g) permission to be temporarily admitted in order to make submissions in person;

made but not determined before 1st February 2017 is to be treated as having been made under these Regulations.

(2) But regulation 21 and the words in parentheses in paragraph (b) of the definition of an EEA decision in regulation 2(1) are of no application to such an application made before 1st February 2017

Removal decisions, deportation orders and exclusion orders under the 2006 Regulations

5.—(1) A decision to remove a person under regulation 19(3)(a), (b) or (c) of the 2006 Regulations must, upon the coming into force of Part 4 of these Regulations in its entirety, be treated as a decision to remove that person under regulation 23(6) (a), (b) or (c) of these Regulations, as the case may be.

(2) A deportation order made under regulation 24(3) of the 2006 Regulations must be treated as a deportation order made under regulation 32(3) of these Regulations.

(3) Until the coming into force of Part 4 in its entirety, a deportation order to which sub-paragraph (2) applies has effect until revoked by the Secretary of State.

(4) An exclusion order made under regulation 19(1B) of the 2006 Regulations must, upon the coming into force of Part 4 in its entirety, be treated as though having been made under regulation 23(5) of these Regulations.

(5) A person removed under regulation 19(3)(a) of the 2006 Regulations before 1st February 2017 is to be taken into account for the purposes of regulation 26(2).

(6) Where sub-paragraph (5) applies to a person, regulation 26 has effect as though the references to “12” were to “36”.

Certification under regulations 24AA and 29AA of the 2006 Regulations

6.—(1) Where the Secretary of State certified under regulation 24AA of the 2006 Regulations (human rights considerations and interim orders to suspend removal) that a person’s removal from the United Kingdom would not be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to the Human Rights Convention), the removal of that person is to be treated as though certified under regulation 33 of these Regulations.

(2) Where sub-paragraph (1) applies, certification treated as though given under regulation 33 does not amount to certification under that regulation for the purposes of paragraph 2(1)(b) of Schedule 2 to these Regulations (appeals to the First-tier Tribunal).

(3) Where the Secretary of State granted a person permission to be temporarily admitted to the United Kingdom to make submissions in person under regulation 29AA of the 2006 Regulations, that permission is to be treated as though given under regulation 41 of these Regulations.

(4) A person temporarily admitted to the United Kingdom in order to make submissions in person under regulation 29AA(6) of the 2006 Regulations is to be treated as though having been temporarily admitted under regulation 41(6) of these Regulations.

Appeals to the Commission

7. Where the Secretary of State certified an EEA decision under regulation 28(2) of the 2006 Regulations (appeals to the Special Immigration Appeals Commission) before 1st February 2017,

that EEA decision is to be treated as though having been certified under regulation 38(2) of these Regulations.

Periods of residence prior to the coming into force of these Regulations

8.—(1) Any period of time during which an EEA national ("P") resided in the United Kingdom in accordance with the conditions listed in sub-paragraphs (2) or (3) is to be taken into account for the purpose of calculating periods of residence in the United Kingdom in accordance with these Regulations.

(2) The condition in this paragraph is that P resided in, or was treated as though having resided in, the United Kingdom in accordance with—

(a) the Immigration (European Economic Area) Regulations 2000(**40**); or

(b) the 2006 Regulations.

(3) The condition in this paragraph is that P resided in the United Kingdom in circumstances where—

(a) P was a national of a State which at that time was not an EEA State;

(b) P had leave to enter or remain in the United Kingdom under the 1971 Act for the duration of P's residence; and

(c) P would have been residing in the United Kingdom in accordance with these Regulations, had P's State of origin been an EEA State at that time, and had these Regulations been in force.

(4) Any period during which P resided in the United Kingdom in circumstances which met the conditions in sub-paragraph (2) or (3) is not to be taken into account for the purposes of sub-paragraph (1) where that residence was followed by a period of at least two continuous years during which—

(a) P was absent from the United Kingdom; or

(b) P's residence in the United Kingdom—

(i) did not meet the conditions in sub-paragraph (2) or (3); or

(ii) was not otherwise in accordance with these Regulations.

[[F87]Preservation of transitional provisions in relation to family members of dual nationals

9.—(1) Where—

(a) the right of a family member ("F") to be admitted to, or reside in, the United Kingdom pursuant to these Regulations depends on a person ("P") being an EEA national;

(b) P would be an EEA national if P was not also a British citizen; and

(c) any of the criteria in sub-paragraphs (2), (3) and (4) is met;

P will, notwithstanding the effect of the definition of an EEA national in regulation 2, be regarded as an EEA national for the purpose of these Regulations.

(2) The criterion in this sub-paragraph is met where F was on 16th July 2012 a person with the right of permanent residence in the United Kingdom under the 2006 Regulations.

(3) Subject to sub-paragraph (5), the criterion in this sub-paragraph is met where F—

(a) was on 16th July 2012 a person with a right of residence in the United Kingdom under the 2006 Regulations; and

(**40**) S.I. 2000/2326, amended by S.I. 2001/865, 2003/549, 3188, 2005/47 and 671.

(b) on 16th October 2012—

(i) held a valid registration certificate or residence card issued under the 2006 Regulations;

(ii) had made an application under the 2006 Regulations for a registration certificate or residence card which had not been determined; or

(iii) had made an application under the 2006 Regulations for a registration certificate or residence card which had been refused and in respect of which an appeal under regulation 26 of the 2006 Regulations could be brought while the appellant was in the United Kingdom (excluding the possibility of an appeal out of time with permission) or was pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002, as it applied on 16th July 2012).

(4) Subject to sub-paragraph (6), the criterion in this sub-paragraph is met where F—

(a) had, prior to 16th July 2012, applied for an EEA family permit pursuant to regulation 12 of the 2006 Regulations; or

(b) had applied for and been refused an EEA family permit and where, on 16th July 2012, an appeal under regulation 26 of the 2006 Regulations against that decision could be brought (excluding the possibility of an appeal out of time with permission) or was pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002 Act, as it applied on 16th July 2012).

(5) The criterion in sub-paragraph (3) is not met in a case to which sub-paragraph (3)(b)(ii) or (iii) applies where no registration certificate or residence card was, in fact, issued pursuant to that application.

(6) The criterion in sub-paragraph (4) is not met where—

(a) F was issued with an EEA family permit pursuant to an application made prior to 16th July 2012 but F had not been admitted to the United Kingdom within six months of the date on which it was issued; or

(b) no EEA family permit was, in fact, issued pursuant to that application.

(7) Where met, the criteria in sub-paragraphs (2), (3) and (4) remain satisfied until the occurrence of the earliest of the following events—

(a) the date on which F ceases to be the family member of P; or

(b) the date on which F's right of permanent residence is lost.

(8) P will only continue to be regarded as an EEA national for the purpose of considering the position of F under these Regulations.**]**

Textual Amendments

F87 Sch. 6 para. 9 inserted (31.1.2017) by The Immigration (European Economic Area) (Amendment) Regulations 2017 (S.I. 2017/1), reg. 1(2), **Sch. para. 5**

SCHEDULE 7

Regulation 45

CONSEQUENTIAL MODIFICATIONS

1.—(1) Unless the context otherwise requires—

(a) any reference in any enactment to the 2006 Regulations, or a provision of the 2006 Regulations, has effect as though referring to these Regulations, or the corresponding provision of these Regulations, as the case may be(**41**);

(b) but—

(i) any reference to a provision of the 2006 Regulations in column 1 of the table has effect as though it were a reference to the corresponding provision of these Regulations listed in column 2; and

(ii) any reference to a provision of the 2006 Regulations with no corresponding provision in these Regulations ceases to have effect.

(2) Unless otherwise specified in the table, sub-divisions of the provisions of the 2006 Regulations listed in column 1 correspond to the equivalent sub-division in the corresponding provision of these Regulations.

(3) This paragraph is of no application where the reference to the 2006 Regulations had the effect of amending the 2006 Regulations. Additionally this paragraph has no application to amendments to the 2006 Regulations made under Schedule 5 of these Regulations.

Table of equivalences

(1)	*(2)*	*(3)*
Provision in the 2006 Regulations	*Corresponding provision in these Regulations*	*Description of provision*
1	1(1) to (2)	Citation and commencement
2(3)	2(2)	General interpretation
3(3)	3(3)(c)	Continuity of residence
4(2)	4(2) and (3)	"Worker", "self-employed person", "self-sufficient person" and "student"
4(4)	4(2) and (4)	
6(2)(ba)	6(2)(c)	"Qualified person"
6(2)(c)	6(2)(d)	
6(2)(d)	6(2)(e)	
6(2A)	6(3)	
6(3)	6(4)	
6(4) and 6(8)	Relevant definitions in 6(1)	
6(9)	6(8)	
6(10)	6(9)	
6(11)	6(10)	
8(2)	8(2) and (7)	Extended family member
8(3)	8(3) and (7)	

(**41**) The following regulations, and paragraphs of those regulations, in the 2006 Regulations have corresponding regulations and paragraphs in these Regulations: regulation 5 ("worker or self-employed person who has ceased activity"), regulation 7 ("family member"), regulation 10 ("family member who has retained the right of residence"), and regulation 13 (initial right of residence).

(1)	*(2)*	*(3)*
Provision in the 2006 Regulations	*Corresponding provision in these Regulations*	*Description of provision*
9(1)	9(1) and (7)	Family members of British citizens
9(3)(a) to (c)	9(3)(a) to (e)	
9(4)	9(5)	
11(4)(ba)	11(4)(c)	Right of admission to the United Kingdom
11(4)(c)	11(4)(d)	
12(1A)	12(2)	Issue of EEA family permit
12(1B)	12(3)(a)	
12(2)	12(4)	
12(3)	12(5)	
12(4)	12(6)	
12(5)	12(7)	
12(6)	12(8)	
14(5)	14(4)	Extended right of residence
15(1A)	15(2)	Right of permanent residence
15(2)	15(3)	
15(3)	15(4)	
15A	16	Derivative right to reside
15A(1)	16(1)	
15A(2)	16(2)	
15A(3)	16(3)	
15A(4)	16(4)	
15A(4A)	16(5)	
15A(5)	16(6)	
15A(6)	16(7)	
15A(7)	16(8)	
15A(7A)	16(9)	
15A(7B)	16(10)	
15A(8)	16(11)	
15A(9)	16(12)	
16	17	Issue of registration certificate
16(8)	17(9)	
17	18	Issue of residence card
17(6A)	18(7)	

(1)	*(2)*	*(3)*
Provision in the 2006 Regulations	*Corresponding provision in these Regulations*	*Description of provision*
18	19	Issue of a document certifying permanent residence and a permanent residence card
18(5)	19(4)(b)	
18(6)	19(5)	
18A	20	Issue of a derivative residence card
18A(5)	20(6)	
19	23	Exclusion and removal from the United Kingdom
19(1A)	23(2)	
19(1AB)	23(3)	
19(1B)	23(5)	
19(2)	23(4)	
19(3)	23(6)	
19(4)	23(7)(a)	
19(5)	23(7)(b)	
20	24	Refusal to issue or renew and revocation of residence documentation
20(1A)	24(2)	
20(2)	24(3)	
20(3)	24(4)	
20(4)	24(5)	
20(5)	24(6)	
20(6)	24(7)	
20A	25	Cancellation of a right of residence
20B	22	Verification of a right of residence
20B(8)	Relevant definition in 2(1)	
21	27	Decisions taken on public policy, public security and public health grounds
21(5)	27(5) and (8) and Schedule 1	
21A	28	Application of Part 4 to persons with a derivative right to reside
21A(1)	28(2)	
21A(2)	28(1)	
21A(3)(c)	28(2)(a)	
21A(3)(d)	28(2)(b)	
21A(3)(f)	28(2)(c)	
21A(3)(g)	28(2)(d)	

(1)	*(2)*	*(3)*
Provision in the 2006 Regulations	*Corresponding provision in these Regulations*	*Description of provision*
21B	26	Misuse of a right to reside
21B(1)	26(1) and (2)	
21B(2)	26(3)	
21B(3)	26(4)	
21B(4)	26(5)	
21B(5)	26(6)	
21B(6)	Relevant definition in 2(1)	
22	29	Person claiming right of admission
23	30	Person refused admission
23A	31	Revocation of admission
24	32	Person subject to removal
24A	34	Revocation of deportation and exclusion orders
24A(1)	34(1) and (2)	
24A(2)	34(3)	
24A(3)	34(4)	
24A(4)	34(5)	
24A(5)	34(6)	
24AA	33	Human rights considerations and interim orders to suspend removal
25	35	Interpretation of Part 6
26	36	Appeal rights
26(2A)	36(3)	
26(3)	36(4)	
26(3A)	36(5)	
26(4)	36(8)	
26(5)	36(7)	
26(6)	36(9)	
26(7)	36(10)	
26(8)	36(11)	
27	37	Out of country appeals
27(1)(zaa)	37(1)(b)	
27(1)(aa)	37(1)(c)	

(1)	*(2)*	*(3)*
Provision in the 2006 Regulations	*Corresponding provision in these Regulations*	*Description of provision*
27(1)(b)	37(1)(d)	
27(1)(c)	37(1)(e)	
27(1)(ca)	37(1)(f)	
27(1)(d)	37(1)(g)	
28	38	Appeals to the Commission
28(8)	38(8) and (9)	
28A	39	National security: EEA Decisions
29	40	Effect of appeals to the First-tier Tribunal or Upper Tribunal
29(4A)	40(5)	
29(5)	40(6)	
29A	42	Alternative evidence of identity and nationality
29AA	41	Temporary admission in order to submit case in person
30	43	Effect on other legislation
31	45 and 46	Revocations etc.
Schedule 1	Schedule 2	Appeals to the First-tier Tribunal
Schedule 1, paragraph 1	Schedule 2, paragraph 2	
Schedule 1, paragraph 2	Schedule 2, paragraph 3	
Schedule 2	Schedule 3	Effect on other legislation
Schedule 2, paragraph 1(2)	Schedule 3, paragraph 1	
Schedule 2, paragraph 3	Schedule 3, paragraph 3	
Schedule 2, paragraph 4	Schedule 2, paragraph 2	

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003, as amended, "the 2006 Regulations") implementing Directive 2004/38/EC of the European Parliament and of the Council of 29th 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 (OJ No. L 158, 30.4.04, p77) ("Directive 2004/38/EC").

These Regulations give effect to certain judgments of the Court of Justice of the European Union ("CJEU") and address issues concerning the practical application of Directive 2004/38/EC within the United Kingdom. As was the case with the 2006 Regulations, these Regulations also apply to nationals from Norway, Iceland, Liechtenstein and Switzerland and their family members as well as to Union citizens and their family members.

These Regulations are similar in form and approach to the 2006 Regulations. Schedule 7 contains a table of equivalences outlining the way in which provisions of the 2006 Regulations correspond to the provisions of these Regulations.

Part 1 (preliminary: regulations 1 to 10) defines the scope of these Regulations and the terms used throughout. A new definition of civil partnerships, marriages and durable partnerships of convenience features in regulation 2(1) (general interpretation). These terms were not defined in the 2006 Regulations.

Regulation 9 contains an exception to the principle that these Regulations do not apply to British citizens. Where a British citizen has exercised any rights under Directive 2004/38/EC to reside in another EEA State with a family member who is not also a citizen of an EEA State, in certain circumstances these Regulations will confer a right to reside on those family members upon their return to the United Kingdom with the British citizen. The new regulation 9 contains a requirement for such residence in another EEA State to be "genuine" in order for these Regulations to apply to a British citizen and any family members upon return to the United Kingdom. Regulation 9(3) contains indicative criteria as to the factors to be considered by the Secretary of State when determining whether residence in another EEA State was "genuine". Regulation 9(4) provides that the regulation is of no application in circumstances where the purpose of the residence of the British citizen in the other EEA State was as a route to circumvent any applicable requirement for any non-EEA family members to have leave to enter or remain in the United Kingdom under the Immigration Act 1971. This gives further effect to the CJEU's judgment in Case C-456/12 *O & B* (ECLI:EU:C:2014:135). Regulation 9(7) applies adjustments to the conditions for being a qualified person where, for the purposes of regulation 9(1), it is a British citizen who needs to satisfy those conditions.

Part 2 (EEA rights: regulations 11 to 16) sets out the rights to admission and to reside conferred on EEA nationals, their family members and those with derivative rights to reside,

Part 3 (residence documentation: regulations 17 to 22) provides for the issue of residence documentation to those who satisfy the conditions in Part 2. A new regulation 21 permits the Secretary of State to require applications for residence documentation under these Regulations to be made using a specified application form, or pursuant to a particular process. Regulation 21(3) requires an applicant for a residence card or derivative residence card to make the application from within the United Kingdom.

Part 4 (refusal of admission and removal etc.: regulations 23 to 28) provides for the exclusion and removal of EEA nationals and their family members. It is based on the approach adopted by Part 4 of the 2006 Regulations with the addition of a requirement in regulation 27(8) for a court or tribunal to have regard to a new Schedule 1 when they consider whether the requirements of regulation 27 are met. Paragraph 1 of Schedule 1 reflects the margin of appreciation enjoyed by member States to determine their own requirements of public policy and public security, tailored to their own purposes, from time to time (Case 41/74 *Van Duyn* ECLI:EU:C:1974:133). Paragraph 2 onwards of Schedule 1 defines, in terms specific to the United Kingdom, considerations applying to a court or tribunal's consideration of whether there are grounds of public policy or public security in an individual case, or whether one of the fundamental interests of society (as defined in paragraph 8 of Schedule 1) are affected.

Part 5 (procedure in relation to EEA decisions: regulations 29 to 34) makes provision for the admission and control of those seeking to enter or reside in the United Kingdom under these Regulations.

Parts 6 (appeals under these regulations: regulations 35 to 42) and 7 (general: regulations 43 to 46) are based upon the corresponding Parts of the 2006 Regulations and concern appeals under these Regulations and general matters respectively. Schedule 2 deals with the effect of appeals made under Part 6.

These Regulations come into force on 1st February 2017, subject to transitional provisions, except for regulation 44 and Schedule 5, which come into force on 25th November 2016. Schedule 5 replaces regulation 9 of the 2006 Regulations with a new regulation that mirrors regulation 9 of these Regulations. This change to the 2006 Regulation will apply to all decisions on applications made under those Regulations on or after 25th November 2016, irrespective of whether the application was made prior to Schedule 5 coming into force. This transitory provision aims to bring in the new approach to family members of British citizens as soon as possible.

Part 1 of Schedule 4 revokes the 2006 Regulations subject to the savings and modifications in Part 2 of that Schedule.

The remainder of these Regulations (Schedules 3 and 6) deals with matters consequential to the above changes.

These Regulations extend to the whole of the United Kingdom.

An impact assessment has not been produced for these Regulations as no impact on businesses, charities, voluntary bodies or the public sector is foreseen.

Status:
Point in time view as at 30/09/2020.

Changes to legislation:
There are currently no known outstanding effects for the The Immigration (European Economic Area) Regulations 2016.