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STATUTORY INSTRUMENTS

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**2016 No. 1052**

**The Immigration (European Economic Area) Regulations 2016**

**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, 16 to 18A and 21 to 24 of Schedule 2 to the 1971 Act (administrative provisions as to control on entry etc)(1), 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.

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(1) 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.

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

### **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, 16 to 19 and 21 to 24 of Schedule 2 to the 1971 Act<sup>(2)</sup>, 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.

### **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

(2) 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 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.

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(3) 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(4) (liability to deportation) applies, and section 5 of that Act(5) (procedure for deportation) and Schedule 3 to that Act(6) (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

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

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

(5) 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.

(6) 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.

(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<sup>(7)</sup> (public authority not to act contrary to Human Rights Convention).

(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.

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(7) 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.