

2006 No. 1003

IMMIGRATION

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

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The Secretary of State, being a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred upon him by that section, and of the powers conferred on him by section 109 of the Nationality, Immigration and Asylum Act 2002^(c), makes the following Regulations:

(a) S.I. 2000/1813.

(b) 1972 c. 68.

(c) 2002 c. 41.

PART 1

INTERPRETATION ETC

Citation and commencement

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

General interpretation

2.—(1) In these Regulations—

“the 1971 Act” means the Immigration Act 1971^(a);

“the 1999 Act” means the Immigration and Asylum Act 1999^(b);

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

►¹“the Accession Regulations” means the Accession (Immigration and Worker Registration) Regulations 2004;◄

►²“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;◄

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

►²“derivative residence card” means a card issued to a person, in accordance with regulation 18A, as proof of the holder’s derivative right to reside in the United Kingdom as at the date of issue;◄

►³“deportation order” means an order made pursuant to regulation 24(3);◄

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

►²“durable partner” does not include 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;◄

►²“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, a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card;

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

(d) the cancellation, pursuant to regulation 20A, of a person’s right to reside in the United Kingdom;◄

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

“EEA national” means a national of an EEA State ►²who is not also a United Kingdom national◄;

“EEA State” means—

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

(b) Norway, Iceland or Liechtenstein; or

(c) Switzerland;

“entry clearance” has the meaning given in section 33(1) of the 1971 Act^(c);

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

¹Defn. of “the Accession Regulations” inserted in reg. 2(1) by Sch. 2, para. 1 of S.I. 2011/544 as from 1.5.11.

²Defn. of “derivative residence card” & “durable partner” inserted & defns. of “civil partner” & “EEA decision” substituted and words inserted in defn. of “EEA national” by Sch. 1, paras. 1(a)-(d) of S.I. 2012/1547 as from 16.7.12 & 16.10.12.

³Defn. of “deportation order” inserted in reg. 2(1) by Sch. 1, para. 1(a)(i) of S.I. 2009/1117 as from 1.6.09.

(a) 1971 c. 77.

(b) 1999 c. 33.

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

Regs. 2-4

¹Defn. of “exclusion order” inserted in reg. 2(1) by Sch. 1, para. 1(a)(ii) of S.I. 2009/1117 as from 1.6.09.

²Defn. of “spouse” in reg. 2 substituted by Sch. 1, para. 1(e) of S.I. 2012/1547 as from 16.7.12.

³Reg. 2(3) inserted & words in reg. 3(3) substituted by Sch. 1, paras. 1(b) and 2 of S.I. 2009/1117 as from 1.6.09.

►¹“exclusion order” means an order made under regulation 19(1B);◄

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

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

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

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

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

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

►²“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;◄

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

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

►³(3) Section 11 of the 1971 Act (construction of references to entry)(a) shall apply 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.◄

Continuity of residence

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

(2) Continuity of residence is not affected by—

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

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

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

(3) But continuity of residence is broken if a person is removed from the United Kingdom under ►³these Regulations◄.

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

4.—(1) In these Regulations—

(a) “worker” means a worker within the meaning of Article 39 of the Treaty establishing the European Community(b);

(b) “self-employed person” means a person who establishes himself in order to pursue activity as a self-employed person in accordance with Article 43 of the Treaty establishing the European Community;

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

(a) 1971 c. 77; section 11 has been amended by section 169 of and Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41) and article 3 of and the Schedule to the Nationality, Immigration and Asylum Act 2002 (Consequential and Incidental Provisions) Order 2003 (S.I. 2003/1016).

(b) OJ No. C 325, 24.12.02, p. 51.

- (i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence; and
- (ii) comprehensive sickness insurance cover in the United Kingdom;
- (d) “student” means a person who—
 - ▶¹(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) assures the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence.

¹Reg. 4(1)(d)(i) substituted by Sch. 1, para. 2(a) of S.I. 2012/1547 as from 16.7.12.

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

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

(3) For the purposes of paragraph (1)(d), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person, the requirement for that person to assure the Secretary of State that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if he assures the Secretary of State that his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden.

▶²(4) For the purposes of paragraphs (1)(c) and (d) and paragraphs (2) and (3), the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if—

²Reg. 4(4) substituted by reg. 2(2) of S.I. 2011/1247 as from 2.6.11.

- (a) they exceed the maximum level of resources which a United Kingdom national and his family members may possess if he is to become eligible for social assistance under the United Kingdom benefit system; or
- (b) paragraph (a) does not apply but, taking into account the personal situation of the person concerned and, where applicable, any family members, it appears to the decision maker that the resources of the person or persons concerned should be regarded as sufficient.◀

▶³(5) For the purpose of regulation 15A(2) references in this regulation to “family members” includes a “primary carer” as defined in regulation 15A(7).◀

³Reg. 4(5) inserted by Sch. 1, para. 2(b) of S.I. 2012/1547 as from 16.7.12.

“Worker or self-employed person who has ceased activity”

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

Regs. 5-6

- (2) A person satisfies the conditions in this paragraph if he—
- (a) terminates his activity as a worker or self-employed person and—
 - (i) has reached the age at which he is entitled to a state pension on the date on which he terminates his activity; or
 - (ii) in the case of a worker, ceases working to take early retirement;
 - (b) pursued his activity as a worker or self-employed person in the United Kingdom for at least twelve months prior to the termination; and
 - (c) resided in the United Kingdom continuously for more than three years prior to the termination.
- (3) A person satisfies the conditions in this paragraph if—
- (a) he terminates his activity in the United Kingdom as a worker or self-employed person as a result of a permanent incapacity to work; and
 - (b) either—
 - (i) he resided in the United Kingdom continuously for more than two years prior to the termination; or
 - (ii) the incapacity is the result of an accident at work or an occupational disease that entitles him to a pension payable in full or in part by an institution in the United Kingdom.
- (4) A person satisfies the conditions in this paragraph if—
- (a) he is active as a worker or self-employed person in an EEA State but retains his place of residence in the United Kingdom, to which he returns as a rule at least once a week; and
 - (b) prior to becoming so active in that EEA State, he had been continuously resident and continuously active as a worker or self-employed person in the United Kingdom for at least three years.
- (5) A person who satisfies the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) shall, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the United Kingdom during any period in which he is working or self-employed in the EEA State.
- (6) The conditions in paragraphs (2) and (3) as to length of residence and activity as a worker or self-employed person shall not apply in relation to a person whose spouse or civil partner is a United Kingdom national.
- (7) ►¹Subject to regulation 7A(3), for the purposes of this regulation—◄
- (a) periods of inactivity for reasons not of the person's own making;
 - (b) periods of inactivity due to illness or accident; and
 - (c) in the case of a worker, periods of involuntary unemployment duly recorded by the relevant employment office,

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

“Qualified person”

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

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student.

(2) ►¹Subject to regulation 7A(4), a person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—◄

¹Words substituted in regs. 5(7) & 6(2) by Sch. 2, paras. 2 & 3 of S.I. 2011/544 as from 1.5.11.

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

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

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

Family member

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

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

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

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

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

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

►¹Application of the Accession Regulations

7A.—(1) This regulation applies to an EEA national who was an accession State worker requiring registration on 30th April 2011 (‘an accession worker’).

¹Reg. 7A inserted by Sch. 2, para. 4 of S.I. 2011/544 as from 1.5.11.

Regs. 7A-8

- (2) In this regulation—
 “accession State worker requiring registration” has the same meaning as in regulation 1(2)(d) of the Accession Regulations;
 “legally working” has the same meaning as in regulation 2(7) of the Accession Regulations.
- (3) In regulation 5(7)(c), where the worker is an accession worker, periods of involuntary unemployment duly recorded by the relevant employment office shall be treated only as periods of activity as a worker—
 (a) during any period in which regulation 5(4) of the Accession Regulations applied to that person; or
 (b) when the unemployment began on or after 1st May 2011.
- (4) Regulation 6(2) applies to an accession worker where he—
 (a) was a person to whom regulation 5(4) of the Accession Regulations applied on 30th April 2011; or
 (b) became unable to work, became unemployed or ceased to work, as the case maybe, on or after 1st May 2011.
- (5) For the purposes of regulation 15, an accession worker shall be treated as having resided in accordance with these Regulations during any period before 1st May 2011 in which the accession worker—
 (a) was legally working in the United Kingdom; or
 (b) was a person to whom regulation 5(4) of the Accession Regulations applied.
- (6) Subject to paragraph (7), a registration certificate issued to an accession worker under regulation 8 of the Accession Regulations shall, from 1st May 2011, be treated as if it was a registration certificate issued under these Regulations where the accession worker was legally working in the United Kingdom for the employer specified in that certificate on—
 (a) 30th April 2011; or
 (b) the date on which the certificate is issued where it is issued after 30th April 2011.
- (7) Paragraph (6) does not apply—
 (a) if the Secretary of State issues a registration certificate in accordance with regulation 16 to an accession worker on or after 1st May 2011; and
 (b) from the date of registration stated on that certificate.◀

“Extended family member”

8.—(1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

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

- (a) the person is residing in ▶¹a country other than the United Kingdom◀ in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
 (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
 (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.

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

¹Words substituted in reg. 8(2)(a) by reg. 2(3) of S.I. 2011/1247 as from 2.6.11.

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

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

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

Family members of United Kingdom nationals

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

(2) The conditions are that—

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

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

“Family member who has retained the right of residence”

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

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

- ▶¹(a) he was a family member of a qualified person or of an EEA national with a permanent right residence when that person died; ◀
- (b) he resided in the United Kingdom in accordance with these Regulations for at least the year immediately before the death of ▶¹the qualified person or the EEA national with a permanent right of residence◀; and
- (c) he satisfies the condition in paragraph (6).

¹Reg. 10(2)(a), words in paras. (2)(b), (3)(a)(i) & (3)(a)(iii) substituted by Sch. 1, para. 3(a)-(e) of S.I. 2012/1547 as from 16.7.12.

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

- (a) he is the direct descendant of—
 - (i) ▶¹a qualified person or an EEA national with a permanent right of residence◀ who has died;
 - (ii) a person who ceased to be a qualified person on ceasing to reside in the United Kingdom; or
 - (iii) the person who was the spouse or civil partner of ▶¹the qualified person or the EEA national with a permanent right of residence◀ mentioned in sub-paragraph (i) when he died or is the spouse or civil partner of the person mentioned in sub-paragraph (ii); and

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¹Reg. 10(5)(a) & (5)(d)(iii) & words in paras. (3)(b), (5)(d)(ii) & (iii) substituted by Sch. 1, para. 3(a)-(e) of S.I. 2012/1547 as from 16.7.12.

- (b) he was attending an educational course in the United Kingdom immediately before ►¹the qualified person or the EEA national with a permanent right of residence◄ died or ceased to be a qualified person and continues to attend such a course.
- (4) A person satisfies the conditions in this paragraph if the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).
- (5) A person satisfies the conditions in this paragraph if–
 - ¹(a) he ceased to be a family member of a qualified person or of an EEA national with a permanent right of residence on the termination of the marriage or civil partnership of that person;◄
 - (b) he was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
 - (c) he satisfies the condition in paragraph (6); and
 - (d) either–
 - (i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;
 - (ii) the former spouse or civil partner of ►¹the qualified person or the EEA national with a permanent right of residence◄ has custody of a child of the qualified person;
 - ¹(iii) the former spouse or civil partner of the qualified person or the EEA national with a permanent right of residence has the right of access to a child of the qualified person or the EEA national with a permanent right of residence, 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 the person is warranted by particularly difficult circumstances, such as he or another family member having been a victim of domestic violence while the marriage or civil partnership was subsisting.
- (6) The condition in this paragraph is that the person–
 - (a) is not an EEA national but would, if he were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or
 - (b) is the family member of a person who falls within paragraph (a).

(7) In this regulation, “educational course” means a course within the scope of Article 12 of Council Regulation (EEC) No. 1612/68 on freedom of movement for workers(a).

(8) A person with a permanent right of residence under regulation 15 shall not become a family member who has retained the right of residence on the death or departure from the United Kingdom of ►²the qualified person or the EEA national with a permanent right of residence◄ or the termination of the marriage or civil partnership, as the case may be, and a family member who has retained the right of residence shall cease to have that status on acquiring a permanent right of residence under regulation 15.

²Words in reg. 10(8) substituted by Sch. 1, para. 3(d) of S.I. 2012/1547 as from 16.7.12.

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

PART 2

EEA RIGHTS

Right of admission to the United Kingdom

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

(2) A person who is not an EEA national must be admitted to the United Kingdom if he is a family member of an EEA national, a family member who has retained the right of residence ►¹a person who meets the criteria in paragraph (5)◄ or a person with a permanent right of residence under regulation 15 and produces on arrival—

- (a) a valid passport; and
- (b) an EEA family permit, a residence card ►¹a derivative residence card◄ or a permanent residence card.

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

(4) Before an immigration officer refuses admission to the United Kingdom to a person under this regulation because the person does not produce on arrival a document mentioned in paragraph (1) or (2), the immigration officer must give the person every reasonable opportunity to obtain the document or have it brought to him within a reasonable period of time or to prove by other means that he is—

- (a) an EEA national;
- (b) a family member of an EEA national with a right to accompany that national or join him in the United Kingdom; ►¹◄
- ¹(ba) a person who meets the criteria in paragraph (5); or◄
- (c) a family member who has retained the right of residence or a person with a permanent right of residence under regulation 15.

►²(5) A person (“P”) meets the criteria in this paragraph where—

- (a) P previously resided in the United Kingdom pursuant to regulation 15A(3) and would be entitled to reside in the United Kingdom pursuant to that regulation were P in the country;
- (b) P 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 pursuant to regulation 15A(2) were P and the EEA national both in the United Kingdom;
- (c) P 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 pursuant to regulation 15A(3); and
 - (ii) P would be entitled to reside in the United Kingdom pursuant to regulation 15A(4) were P and the relevant person both in the United Kingdom.
- (d) P is accompanying a person who meets the criteria in (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 15A in reliance on which they now base their claim to admission; and
 - (ii) P would be entitled to reside in the United Kingdom pursuant to regulation 15A(5) were P and the relevant person there.

¹Words in reg. 11(2) & (2)(b) inserted, word in reg. 11(4) omitted & sub-para. (4)(ba) added by Sch. 1, para. 4(a)-(c) of S.I. 2012/1547 as from 16.7.12.

²Reg. 11(5)-(7) inserted by Sch. 1, para. 4(d) of S.I. 2012/1547 as from 16.7.12.

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(6) Paragraph (7) applies where—

- (a) a person (“P”) seeks admission to the United Kingdom in reliance on paragraph (5)(b) or (c); and
- (b) if P were in the United Kingdom, P would have a derived right to reside by virtue of regulation 15A(7)(b)(ii).

(7) Where this paragraph applies a person (“P”) will only be regarded as meeting the criteria in paragraph (5)(b) or (c) 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 15A(7)(b)(ii); or
- (b) has previously resided in the United Kingdom pursuant to regulation 15A(2) or (4) as a joint primary carer and seeks admission to the United Kingdom in order to reside there again on the same basis. ◀

¹Reg. 11(5) renumbered (8) by Sch. 1, para. 4(d) of S.I. 2012/1547 as from 16.7.12.

▶¹(8)◀ But this regulation is subject to regulations 19(1) and (2).

Issue of EEA family permit

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

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

²Reg. 12(1)(b) substituted by reg. 2(4) of S.I. 2011/1247 as from 2.6.11.

▶²(b) the family member will be accompanying the EEA national to the United Kingdom or joining the EEA national there. ◀

³Reg. 12(1A) & (1B) inserted by Sch. 1, para. 5(a) of S.I. 2012/1547 as from 16.7.12.

▶³(1A) An entry clearance officer must issue an EEA family permit to a person who applies and provides proof that, at the time at which he first intends to use the EEA family permit, he—

- (a) would be entitled to be admitted to the United Kingdom by virtue of regulation 11(5); and
- (b) will (save in the case of a person who would be entitled to be admitted to the United Kingdom by virtue of regulation 11(5)(a)) be accompanying to, or joining in, the United Kingdom any person from whom his right to be admitted to the United Kingdom under regulation 11(5) will be derived.

(1B) An entry clearance officer must issue an EEA family permit to a family member who has retained the right of residence. ◀

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

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

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

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

(5) But an EEA family permit shall not be issued under this regulation if the applicant or the EEA national concerned ►¹ is not entitled to be admitted to the United Kingdom as a result of regulation 19(1A) or falls to be excluded in accordance with regulation 19(1B)◄.

►¹(6) an EEA family permit will 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.◄

¹Reg. 12(6) inserted, words in para. (5) & para. 13(3) substituted & words in reg. 13(2) added by Sch. 1, para. 5(b)-6(b) of S.I. 2012/1547 as from 16.7.12.

Initial right of residence

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

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

►¹(3) an EEA national or his family member who becomes an unreasonable burden on the social assistance system of the United Kingdom shall cease to have the right to reside under this regulation.

(4) A person who otherwise satisfies the criteria in this regulation will not be entitled to reside in the United Kingdom under this regulation where the Secretary of State has made a decision under regulation 19(3)(b), 20(1), or 20A(1).◄

Extended right of residence

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

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

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

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

►²(5) A person who otherwise satisfies the criteria in this regulation will not be entitled to a right to reside in the United Kingdom under this regulation where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).◄

²Reg. 14(5) substituted by Sch. 1, para. 7 of S.I. 2012/1547 as from 16.7.12.

Permanent right of residence

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

- (a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;
- (b) a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;
- (c) a worker or self-employed person who has ceased activity;
- (d) the family member of a worker or self-employed person who has ceased activity;
- (e) a person who was the family member of a worker or self-employed person where—

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- (i) the worker or self-employed person has died;
- (ii) the family member resided with him immediately before his death; and
- (iii) the worker or self-employed person had resided continuously in the United Kingdom for at least the two years immediately before his death or the death was the result of an accident at work or an occupational disease;
- (f) a person who—
 - (i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and
 - (ii) was, at the end of that period, a family member who has retained the right of residence.

¹Reg. 15(1A) inserted, words in para. (2) & para. (3) substituted and regs. 15A & 15B added by Sch. 1, paras. 8-10 of S.I. 2012/1547 as from 16.7.12.

►¹(1A) Residence in the United Kingdom as a result of a derivative right of residence does not constitute residence for the purpose of this regulation.◄

(2) ►¹The◄ right of permanent residence under this regulation shall be lost only through absence from the United Kingdom for a period exceeding two consecutive years.

►¹(3) A person who satisfies the criteria in this regulation will not be entitled to a permanent right to reside in the United Kingdom where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).◄

►¹15A. Derivative right of residence

(1) A person (“P”) who is not entitled to reside in the United Kingdom as a result of any other provision of these Regulations and who satisfies the criteria in paragraph (2), (3), (4) or (5) of this regulation is entitled to a derivative right to reside in the United Kingdom for as long as P satisfies the relevant criteria.

(2) P satisfies the criteria in this paragraph if—

- (a) P is the primary carer of an EEA national (“the relevant EEA national”); and
- (b) the relevant EEA national—
 - (i) is under the age of 18;
 - (ii) is residing in the United Kingdom as a self-sufficient person; and
 - (iii) would be unable to remain in the United Kingdom if P were required to leave.

(3) P satisfies the criteria in this paragraph if—

- (a) P is the child of an EEA national (“the EEA national parent”);
- (b) P resided in the United Kingdom at a time when the EEA national parent was residing in the United Kingdom as a worker; and
- (c) P is in education in the United Kingdom and was in education there at a time when the EEA national parent was in the United Kingdom.

(4) P satisfies the criteria in this paragraph if—

- (a) P is the primary carer of a person meeting the criteria in paragraph (3) (“the relevant person”); and
- (b) the relevant person would be unable to continue to be educated in the United Kingdom if P were required to leave.

(5) P satisfies the criteria in this paragraph if—

- (a) P is under the age of 18;
- (b) P’s primary carer is entitled to a derivative right to reside in the United Kingdom by virtue of paragraph (2) or (4);
- (c) P does not have leave to enter, or remain in, the United Kingdom; and
- (d) requiring P to leave the United Kingdom would prevent P’s primary carer from residing in the United Kingdom.

- (6) For the purpose of this regulation—
- (a) “education” excludes nursery education; and
 - (b) “worker” does not include a jobseeker or a person who falls to be regarded as a worker by virtue of regulation 6(2).
- (7) P is to be regarded as a “primary carer” of another person if
- (a) P is a direct relative or a legal guardian of that person; and
 - (b) P—
 - (i) is the person who has primary responsibility for that person’s care; or
 - (ii) shares equally the responsibility for that person’s care with one other person who is not entitled to reside in the United Kingdom as a result of any other provision of these Regulations and who does not have leave to enter or remain.
- (8) P will not be regarded as having responsibility for a person’s care for the purpose of paragraph (7) on the sole basis of a financial contribution towards that person’s care.
- (9) A person who otherwise satisfies the criteria in paragraph (2), (3), (4) or (5) will not be entitled to a derivative right to reside in the United Kingdom where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).

15B. Continuation of a right of residence

- (1) This regulation applies during any period in which, but for the effect of regulation 13(4), 14(5), 15(3) or 15A(9), a person (“P”) who is in the United Kingdom would be entitled to reside here pursuant to these Regulations.
- (2) Where this regulation applies, any right of residence will (notwithstanding the effect of regulation 13(4), 14(5), 15(3) or 15A(9)) be deemed to continue during any period in which—
- (a) an appeal under regulation 26 could be brought, while P is in the United Kingdom, against a relevant decision (ignoring any possibility of an appeal out of time with permission); or
 - (b) an appeal under regulation 26 against a relevant decision, brought while P is in the United Kingdom, is pending (within the meaning of section 104 of the 2002 Act).
- (3) Periods during which residence pursuant to regulation 14 is deemed to continue as a result of paragraph (2) will not constitute residence for the purpose of regulation 15 unless and until—
- (a) a relevant decision is withdrawn by the Secretary of State; or
 - (b) an appeal against a relevant decision is allowed and that appeal is finally determined (within the meaning of section 104 of the 2002 Act).
- (4) Periods during which residence is deemed to continue as a result of paragraph (2) will not constitute residence for the purpose of regulation 21(4)(a) unless and until—
- (a) a relevant decision is withdrawn by the Secretary of State; or
 - (b) an appeal against a relevant decision is allowed and that appeal is finally determined (within the meaning of section 104 of the 2002 Act).
- (5) A “relevant decision” for the purpose of this regulation means a decision pursuant to regulation 19(3)(b), 20(1) or 20A(1) which would, but for the effect of paragraph (2), prevent P from residing in the United Kingdom pursuant to these Regulations. ◀

PART 3

RESIDENCE DOCUMENTATION

Issue of registration certificate

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

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

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

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

- (a) a valid identity card or passport issued by an EEA State; and
- (b) proof that the applicant is such a family member.

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

- (a) a valid identity card or passport; and
- (b) proof that the applicant is a family member who has retained the right of residence.

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

- (a) the relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under regulation 15; and
- (b) in all the circumstances it appears to the Secretary of State appropriate to issue the registration certificate.

(6) Where the Secretary of State receives an application under paragraph (5) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.

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

►¹(8) But this regulation is subject to regulations 7A(6) and 20(1).◀

¹Reg. 16(8) substituted by Sch. 2, para. 5 of S.I. 2011/544 as from 1.5.11.

Issue of residence card

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

- (a) a valid passport; and
- (b) proof that the applicant is such a family member.

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

- (a) a valid passport; and
- (b) proof that the applicant is a family member who has retained the right of residence.

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

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

- (a) the relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under regulation 15; and
- (b) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.

(5) Where the Secretary of State receives an application under paragraph (4) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.

(6) A residence card issued under this regulation may take the form of a stamp in the applicant's passport and shall be ►¹ 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,

¹Words deleted in reg. 17(6) & (6A) inserted, words in reg. 17(8) substituted by paras. 4(a)-(c) of Sch. 1 of S.I. 2009/1117 as from 1.6.09.

whichever is the shorter.

►¹(6A) A residence card issued under this regulation shall be entitled “Residence card of a family member of an EEA national” or “Residence card of a family member who has retained the right of residence”, as the case may be.◄

(7) A residence card issued under this regulation shall be issued free of charge.

(8) But this regulation is subject to ►¹regulations 20(1) and (1A)◄.

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

18.—(1) The Secretary of State must issue an EEA national with a permanent right of residence under regulation 15 with a document certifying permanent residence as soon as possible after an application for such a document and proof that the EEA national has such a right is submitted to the Secretary of State.

(2) The Secretary of State must issue a person who is not an EEA national who has a permanent right of residence under regulation 15 with a permanent residence card no later than six months after the date on which an application for a permanent residence card and proof that the person has such a right is submitted to the Secretary of State.

(3) Subject to paragraph (5) ►²◄, a permanent residence card shall be valid for ten years from the date of issue and must be renewed on application.

²Words omitted in 18(3) & reg. 18(6) inserted by paras. 4(b) & 5(a)-(b) of Sch. 1 of S.I. 2009/1117 as from 1.6.09.

(4) A document certifying permanent residence and a permanent residence card shall be issued free of charge.

(5) A document certifying permanent residence and a permanent residence card shall cease to be valid if the holder ceases to have a right of permanent residence under regulation 15.

►²(6) But this regulation is subject to regulation 20.◄

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¹Reg. 18A inserted by Sch. 1, para. 11 of S.I. 2012/1547 as from 16.7.12

►¹18A. Issue of a derivative residence card

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

- (a) a valid identity card issued by an EEA State or a valid passport; and
- (b) proof that the applicant has a derivative right of residence under regulation 15A.

(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) may take the form of a stamp in the applicant's passport and will be valid until—

- (a) a date five years from the date of issue; or
- (b) any other 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 free of charge and as soon as practicable.

(5) But this regulation is subject to regulations 20(1) and 20(1A).◀

PART 4**REFUSAL OF ADMISSION AND REMOVAL ETC****Exclusion and removal from the United Kingdom**

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

²Words in regs. 19(1A) & (1B) inserted & reg. 19(3) substituted by para. 6 of Sch. 1 of S.I. 2009/1117 as from 1.6.09.

►²(1A) 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.

(1B) If the Secretary of State considers that the exclusion of an 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 21 the Secretary of State may make an order for the purpose of these Regulations prohibiting that person from entering the United Kingdom.◀

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

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

►²(3) Subject to paragraphs (4) and (5), 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; or
- (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 21.◀

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

(5) A person must not be removed under paragraph (3) if he has a right to remain in the United Kingdom by virtue of leave granted under the 1971 Act unless his removal

is justified on the grounds of public policy, public security or public health in accordance with regulation 21.

Refusal to issue or renew and revocation of residence documentation

20.—(1) The Secretary of State may refuse to issue, revoke or refuse to renew a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card if the refusal or revocation is justified on grounds of public policy, public security or public health.

►¹(1A) ►²A decision under regulation 19(3) to remove a person from the United Kingdom will (save during any period in which a right of residence is deemed to continue as a result of regulation 15B(2)) invalidate◀ 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.◀

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

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

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

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

(5) ►¹An entry clearance officer or immigration officer may at any time revoke a person's◀ EEA family permit if—

- (a) the revocation is justified on grounds of public policy, public security or public health; or
- (b) the person is not at that time the family member of an EEA national with the right to reside in the United Kingdom under these Regulations or is not accompanying that national or joining him in the United Kingdom.

(6) Any action taken under this regulation on grounds of public policy, public security or public health shall be in accordance with regulation 21.

►²20A. Cancellation of a right of residence

(1) Where the conditions in paragraph (2) are met the Secretary of State may cancel a person's right to reside in the United Kingdom pursuant to these Regulations.

(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 grounds of public policy, public security or public health in accordance with regulation 21;
- (c) the circumstances are such that the Secretary of State cannot make a decision under regulation 20(1); and
- (d) it is not possible for the Secretary of State to remove the person from the United Kingdom pursuant to regulation 19(3)(b).◀

¹Reg. 20(1A) inserted & words in reg. 20(5) substituted by Sch. 1 para. 7 of S.I. 2010/1117 as from 1.6.09.
²Words in reg. 20(1A) substituted & reg. 20A inserted by Sch. 1, paras. 12 & 13 of S.I. 2012/1547 as from 16.7.12.

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

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

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

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

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

- (a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
- (b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989^(a).

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—

- (a) the decision must comply with the principle of proportionality;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person’s previous criminal convictions do not in themselves justify the decision.

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

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

- (a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation^(b) or is not a disease to which section 38 of the Public Health (Control of Disease) Act 1984^(c) applies (detention in hospital of a person with a notifiable disease) shall not constitute grounds for the decision; and
- (b) if the person concerned is in the United Kingdom, diseases occurring after the three month period beginning on the date on which he arrived in the United Kingdom shall not constitute grounds for the decision.

¹Reg. 21A inserted by Sch. 1, para. 14 of S.I. 2012/1547 as from 16.7.12.

►¹21A. Application of Part 4 to persons with a derivative right of residence

(1) Where this regulation applies Part 4 of these Regulations applies subject to the modifications listed in paragraph (3).

(2) This regulation applies where a person—

- (a) would, notwithstanding Part 4 of these Regulations, have a right to be admitted to, or reside in, the United Kingdom by virtue of a derivative right of residence arising under regulation 15A(2), (4) or (5);

(a) Cmd 1976.

(b) The relevant instrument of the World Health Organisation for these purposes is currently the International Health Regulations (2005).

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

- (b) holds a derivative residence card; or
- (c) has applied for a derivative residence card.

(3) Where this regulation applies Part 4 applies in relation to the matters listed in paragraph (2) as if—

- (a) references to a matter being “justified on grounds of public policy, public security or public health in accordance with regulation 21” referred instead to a matter being “conducive to the public good”;
- (b) the reference in regulation 20(5)(a) to a matter being “justified on grounds of public policy, public security or public health” referred instead to a matter being “conducive to the public good”;
- (c) references to “the family member of an EEA national” referred instead to “a person with a derivative right of residence”;
- (d) 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”;
- (e) the reference in regulation 19(1A) to a deportation or exclusion order referred also to a deportation or exclusion order made under any provision of the immigration Acts.
- (f) regulation 20(4) 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 of residence; and
- (g) regulations 20(3), 20(6) and 21 were omitted.◀

PART 5

PROCEDURE IN RELATION TO EEA DECISIONS

Person claiming right of admission

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

- (a) a person, not being an EEA national, who is a family member of an EEA national, a family member who has retained the right of residence ►¹, a person who has a derivative right of residence◀ or a person with a permanent right of residence under regulation 15; or
- ²(b) an EEA national, where there is reason to believe that he may fall to be excluded under regulation 19(1) or (1A).◀

(2) A person to whom this regulation applies is to be treated as if he were a person seeking leave to enter the United Kingdom under the 1971 Act for the purposes of paragraphs 2, 3, 4, 7, 16 to 18 and 21 to 24 of Schedule 2 to the 1971 Act(a) (administrative provisions as to control on entry etc), except that—

- (a) the reference in paragraph 2(1) to the purpose for which the immigration officer may examine any persons who have arrived in the United Kingdom is to be read as a reference to the purpose of determining whether he is a person who is to be granted admission under these Regulations;
- (b) the references in paragraphs 4(2A), 7 and 16(1) to a person who is, or may be, given leave to enter are to be read as references to a person who is, or may be, granted admission under these Regulations; and

¹Words in reg. 22(1)(a) inserted by Sch. 1, para. 15 of S.I. 2012/1547 as from 16.7.12.

²Reg. 22(1)(b) substituted by Sch. 1, para. 8 of S.I. 2009/1117 as from 1.6.09.

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

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

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

Person refused admission

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

- (a) because he does not meet the requirement of regulation 11 (including where he does not meet those requirements because his EEA family permit, residence card ►¹, derivative residence card◄ or permanent residence card has been revoked by an immigration officer in accordance with regulation 20); or
- (b) in accordance with regulation ►²19(1), (1A) or (2)◄.

¹Words inserted in reg. 23(1)(a) & (2) and words substituted in reg. 24 by Sch. 1, para. 17(a) of S.I. 2012/1547 as from 16.7.12.

²Words in regs. 23(1)(b) & 24(2) and reg. 24(1) substituted by Sch. 1, paras. 9 & 10 of S.I. 2009/1117 as from 1.6.09.

(2) A person to whom this regulation applies, is to be treated as if he were a person refused leave to enter under the 1971 Act for the purpose of paragraphs 8, 10, 10A, 11, 16 to 19 and 21 to 24 of Schedule 2 to the 1971 Act, except that the reference in paragraph 19 to a certificate of entitlement, entry clearance or work permit is to be read as a reference to an EEA family permit, residence card ►¹, derivative residence card◄ or a permanent residence card.

Person subject to removal

24.—►²(1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the United Kingdom under ►¹regulation 19(3)(b)◄, that person may be detained under the authority of ►¹the Secretary of State◄ pending a decision whether or not to remove the person under that regulation, and paragraphs 17 and 18 of Schedule 2 to the 1971 Act(a) shall 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) ►²Where a decision is taken to remove a person◄ under regulation 19(3)(a), the person is to be treated as if he were a person to whom section 10(1)(a) of the 1999 Act(b) applied, and section 10 of that Act (removal of certain persons unlawfully in the United Kingdom) is to apply accordingly.

(3) ►³Where a decision is taken to remove a person◄ under regulation 19(3)(b), the person is to be treated as if he were a person to whom section 3(5)(a) of the 1971 Act(c) (liability to deportation) applied, and section 5 of that Act(d) (procedure for deportation) and Schedule 3 to that Act(e) (supplementary provision as to deportation) are to apply accordingly.

³Words in reg. 24(3) by Sch. 1, paras. 9 & 10(c) & 11 of S.I. 2009/1117 as from 1.6.09.

- (a) Paragraph 17 of Schedule 2 to the 1971 Act has been amended by section 12 of the Asylum and Immigration Act 1996 (c. 49), section 140 of the Immigration and Asylum Act 1999 (c. 33) and sections 63 and 64 of the Nationality, Immigration and Asylum Act 2002 (c. 41); paragraph 18 of Schedule 2 to the 1971 Act has been amended by section 169 of the Immigration and Asylum Act 1999.
- (b) Section 10 is amended by sections 73 to 75 of and Schedule 9 to the 2002 Act.
- (c) Section 3(5) is amended by paragraphs 43 and 44 of Schedule 14 to the 1999 Act.
- (d) Section 5 is amended by paragraph 2 of Schedule 4 to the British Nationality Act 1981 (c. 61), paragraph 2 of the Schedule to the Immigration Act 1988 (c. 14), paragraph 2 of Schedule 2 to the Asylum and Immigration Act 1996 (c. 49) and paragraph 37 of Schedule 27 to the Civil Partnership Act 2004 (c. 33).
- (e) Schedule 3 is amended by paragraphs 1 and 2 of Schedule 10 to the Criminal Justice Act 1982 (c. 48), paragraph 10 of Schedule 10 to the Immigration Act 1988 (c. 14), paragraph 13 of Schedule 2 to the Asylum and Immigration Act 1996 (c. 49), section 54 of, and paragraphs 43 and 68 of Schedule 14 to, the 1999 Act, paragraphs 7 and 8 of Schedule 7 to the 2002 Act, paragraph 150 of Schedule 8, and Schedule 10, to the Courts Act 2003 (c. 39), and section 34 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19).

Regs. 24-24A

►¹(4) A person who enters the United Kingdom in breach of a deportation or exclusion order shall be removable as an illegal entrant under Schedule 2 to the 1971 Act and the provisions of that Schedule shall apply accordingly.◄

¹Para. (4) substituted & reg. 24A inserted by Sch. 1, paras. 9 & 10(c) & 11 of S.I. 2009/1117 as from 1.6.09.

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

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

- (a) in duly substantiated cases of urgency;
- (b) where the person is detained pursuant to the sentence or order of any court;
- (c) where a person is a person to whom regulation 24(4) applies.

►²(7) Paragraph (6) of this regulation does not apply where a decision has been taken under regulation 19(3) on the basis that the relevant person—

- (a) has ceased to have a derivative right of residence; or
- (b) is a person who would have had a derivative right of residence but for the effect of a decision to remove under regulation 19(3)(b).◄

²Reg. 24(7) inserted & words in reg. 24A(4) substituted by Sch. 1, para. 17(b) & 18 of S.I. 2012/1547 as from 16.7.12.

►¹Revocation of deportation and exclusion orders

24A.—(1) A deportation or exclusion order shall remain in force unless it is revoked by the Secretary of State under this regulation.

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

(3) An application under paragraph (2) shall 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.

(4) On receipt of an application under paragraph (2), the Secretary of State shall revoke the order if the Secretary of State considers that ►²the criteria for making such an order are no longer satisfied◄.

(5) The Secretary of State shall 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

25.—(1) In this Part—

►¹◄

►²“Asylum claim” has the meaning given in section 113(1) of the 2002 Act;◄

“Commission” has the same meaning as in the Special Immigration Appeals Commission Act 1997(a);

►²◄

►²“Human rights claim” has the meaning given in section 113(1) of the 2002 Act;◄

¹Defn. of “Asylum & Immigration Tribunal” omitted in reg. 25 by para. 22 of Sch. 2 to S.I. 2010/21 as from 15.2.10.

²Defns. of “Human Rights Convention” & “the Refugee Convention” omitted, defns. of “Asylum Claim” & “Human Rights Claim” inserted & reg. 26(3) substituted & (3A) added by Sch. 1, para. 19 & 20 of S.I. 2012/1547 as from 16.7.12.

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

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

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

Appeal rights

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

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

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

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

(b) either—

(i) an EEA family permit;

(ii) proof that he is the family member or relative of an EEA national; or

(iii) in the case of a person claiming to be a family member who has retained the right of residence, proof that he was a family member of the relevant person.◄

►²(3A) If a person claims to be a person with a derivative right of residence he may not appeal under these Regulations unless he provides a valid national identity card issued by an EEA State or a passport, and either—

(a) an EEA family permit; or

(b) proof that—

(i) where the person claims to have a derivative right of residence under regulation 15A(2), he is a direct relative or guardian of an EEA national who is under the age of 18;

(ii) where the person claims to have a derivative right of residence under regulation 15A(3), he is the child of an EEA national;

(iii) where the person claims to have a derivative right of residence under regulation 15A(4), he is a direct relative or guardian of the child of an EEA national;

(a) 1997 c. 68.

- (iv) where the person claims to have a derivative right of residence under regulation 15A(5), he is under the age of 18 and is a dependant of a person satisfying the criteria in (i) or (ii).◀

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

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

(6) Except where an appeal lies to the Commission, an appeal under these Regulations lies to the ►¹First-tier Tribunal or Upper Tribunal◀.

(7) The provisions of or made under the 2002 Act referred to in Schedule 1 shall have effect for the purposes of an appeal under these Regulations to the ►¹First-tier Tribunal or Upper Tribunal◀ in accordance with that Schedule.

¹Words substituted in reg. 26(6) & (7) by para. 23 of Sch. 2 to S.I. 2010/21 as from 15.2.10.

Out of country appeals

27.—(1) Subject to paragraphs (2) and (3), a person may not appeal under regulation 26 whilst he is in the United Kingdom against an EEA decision—

- (a) to refuse to admit him to the United Kingdom;
- ²(aa) to make an exclusion order against him;◀
- (b) to refuse to revoke a deportation ►²or exclusion◀ order made against him;
- (c) to refuse to issue him with an EEA family permit;
- ³(ca) to revoke, or to refuse to issue or renew any document under these Regulations where that decision is taken at a time when the relevant person is outside the United Kingdom; or◀
- ²(d) to remove him from the United Kingdom after he has entered the United Kingdom in breach of a deportation or exclusion order.◀

²In reg. 27, para. (1)(aa) & words in paras. (1)(b) & (2)(b) added, para. (1)(d) & words in para. (2)-(2)(a) substituted by Sch. 1, para. 12 of S.I. 2009/1117 as from 1.6.09.

³Para. (1)(ca) & words in para. (2)(a) inserted, para. (2)(c) & (3) substituted by Sch. 1, para. 21(a)-(d) of S.I. 2012/1547 as from 16.7.12.

(2) ►²Paragraphs (1)(a) and (aa) do not apply where the person is in the United Kingdom and◀—

- (a) the person held ►²a valid EEA family permit, registration certificate, residence card, ►derivative residence card,◀ document certifying permanent residence or permanent residence card◀ on his arrival in the United Kingdom or can otherwise prove that he is resident in the United Kingdom;
- (b) the person is deemed not to have been admitted to the United Kingdom under regulation 22(3) but at the date on which notice of the decision to refuse to admit him is given he has been in the United Kingdom for at least 3 months; ►²or◀
- ³(c) has made an asylum or human rights claim (or both), unless the Secretary of State has certified that the claim or claims is or are clearly unfounded.

(3) Paragraph (1)(d) does not apply where the person has made an asylum or human rights claim (or both), unless the Secretary of State has certified that the claim or claims is or are clearly unfounded.◀

Appeals to the Commission

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

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

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

(a) Section 82(1) is amended by section 26 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (c. 19).

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

- (a) in the interests of national security; or
- (b) in the interests of the relationship between the United Kingdom and another country.

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

- (a) in the interests of national security;
- (b) in the interests of the relationship between the United Kingdom and another country; or
- (c) otherwise in the public interest.

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

(6) Where a certificate is issued under paragraph (2) or (4) in respect of a pending appeal to the ►¹First-tier Tribunal or Upper Tribunal◄ the appeal shall lapse.

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

(8) The Special Immigration Appeals Commission Act 1997 shall apply to an appeal to the Commission under these Regulations as it applies to an appeal under section 2 of that Act to which subsection (2) of that section applies (appeals against an immigration decision) but paragraph (i) of that subsection shall not apply in relation to such an appeal.

¹Words substituted in reg. 28(6) & heading to & reg. 29(1) by Sch. 2, paras. 24 & 25 of S.I. 2010/21 as from 15.2.10.

Effect of appeals to the ►¹First-tier Tribunal or Upper Tribunal◄

29.—(1) This Regulation applies to appeals under these Regulations made to the ►¹First-tier Tribunal or Upper Tribunal◄.

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

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

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

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

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

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

(6) If a person in the United Kingdom appeals against an EEA decision to remove him from the United Kingdom, a deportation order is not to be made against him under section 5 of the 1971 Act while the appeal is pending.

(7) Paragraph 29 of Schedule 2 to the 1971 Act (grant of bail pending appeal) applies to a person who has an appeal pending under these Regulations as it applies to a person who has an appeal pending under section 82(1) of the 2002 Act.

PART 7 GENERAL

Effect on other legislation

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

Revocations, transitional provisions and consequential amendments

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

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

30th March 2006

Tony McNulty
Minister of State
Home Office

SCHEDULE 1

Regulation 26(7)

APPEALS TO THE ►¹FIRST-TIER TRIBUNAL◄

¹Words substituted in heading to Sch. 1 & para. 1, words omitted in para. 1 & para. 2 inserted by para. 26(a)-(d) of Sch. 2 to S.I. 2010/21 as from 15.2.10.

►¹1.◄ The following provisions of, or made under, the 2002 Act have effect in relation to an appeal under these Regulations to the ►¹First-tier Tribunal or Upper Tribunal◄ as if it were an appeal against an immigration decision under section 82(1) of that Act:

section 84(1)(a), except paragraphs (a) and (f);
sections 85 to 87;

►¹◄

section 105 and any regulations made under that section; and
section 106 and any rules made under that section(b).

►¹2. Tribunal Procedure Rules have effect in relation to appeals under these Regulations.◄

SCHEDULE 2

Regulation 30

EFFECT ON OTHER LEGISLATION

Leave under the 1971 Act

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

²Words inserted in para. 1(2) & para. 1(3) & (4) inserted by para. 2(2)(a)(i) & (ii) of Sch. 2 to S.I. 2006/3317 as from 1.1.07.

(2) ►²Subject to sub-paragraph (3),◄ where a person has leave to enter or remain under the 1971 Act which is subject to conditions and that person also has a right to reside under these Regulations, those conditions shall not have effect for as long as the person has that right to reside.

►²(3) Where the person mentioned in sub-paragraph (2) is an accession State national subject to worker authorisation working in the United Kingdom during the accession period and the document endorsed to show that the person has leave is an accession worker authorisation shall continue to apply.

(4) In sub-paragraph (3)–

- (a) “accession period” has the meaning given in regulation 1(2)(c) of the Accession (Immigration and Worker Authorisation) Regulations 2006;
- (b) “accession State national subject to worker authorisation” has the meaning given in regulation 2 of those Regulations; and
- (c) “accession worker authorisation document” has the meaning given in regulation 9(2) of those Regulations.◄

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

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

(a) Section 84(1) is amended by S.R. 2003/341.

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

(c) 1988 c. 14.

(d) 1981 c. 61.

(2) But a qualified person, the family member of a qualified person ►¹, a person with a derivative right of residence ◄ and a family member who has retained the right of residence shall not, by virtue of that status, be so regarded for those purposes.

¹Words inserted in para. 2(2), 3, & 4(2) of Sch. 2 by Sch. 1, paras. 22-24 of S.I. 2012/1547 as from 16.7.12.

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 (a) (charges in respect of passenger without proper documents), "a visa of the required kind" includes an EEA family permit, a residence card ►¹, a derivative residence card ◄ or a permanent residence card required for admission under regulation 11(2).

Appeals under the 2002 Act and previous immigration Acts

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

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

(2) A person who has been issued with a registration certificate, residence card, ►¹derivative residence card, ◄ a document certifying permanent residence or a permanent residence card under these Regulations or a registration certificate under the Accession (Immigration and Worker Registration) Regulations 2004 (b) ►² or an accession worker card under the Accession (Immigration and Worker Authorisation) Regulations 2006, ◄ or a person whose passport has been stamped with a family member residence stamp, shall have no right of appeal under section 2 of the Special Immigration Appeals Commission Act 1997 or section 82(1) of the 2002 Act. Any existing appeal under those sections of those Acts or under the Asylum and Immigration Appeals Act 1993 (c), the Asylum and Immigration Act 1996 (d) or the 1999 Act shall be treated as abandoned.

²Words inserted in para. 4(2) by para. 2(2)(b) of Sch. 2 to S.I. 2006/3317 as from 1.1.07.

(3) Subject to paragraph (4), a person may appeal to the ►³First-tier Tribunal ◄ under section 83(2) of the 2002 Act against the rejection of his asylum claim where—

³Words substituted in para. 4(3) by para. 27 of Sch. 2 to S.I. 2010/21 as from 15.2.10.

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

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

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

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

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

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

(b) S.I. 2004/1219, amended by S.I. 2004/1236 and S.I. 2005/2400.

(c) 1993 c. 23.

(d) 1996 c. 49.

Schs. 2-3

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

¹Words in para. 4(9) of Sch. 2 substituted by Sch. 1, para. 24(b) of S.I. 2012/1547 as from 16.7.12.

²Words inserted in para. 4(9) by para. 2(c) of Sch. 2 to S.I. 2006/3317 as from 1.1.07.

(9) In sub-paragraph ►¹(2)◄, “family member residence stamp” means a stamp in the passport of a family member of an EEA national confirming that he is the family member of an accession State worker requiring registration ►²or an accession State national subject to worker authorisation working in the United Kingdom◄ with a right of residence under these Regulations as the family member of that worker; and in this sub-paragraph “accession State worker requiring registration” has the same meaning as in regulation 2 of the Accession (Immigration and Worker Registration) Regulations 2004 ►²and “accession State national subject to worker authorisation” has the meaning given in regulation 2 of the Accession (Immigration and Worker Authorisation) Regulations 2006◄.

SCHEDULE 3

Regulation 31(2)

REVOCATIONS AND SAVINGS

PART 1

TABLE OF REVOCATIONS

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

PART 2
SAVINGS

1. The—

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

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

SCHEDULE 4

Regulation 31(2)

TRANSITIONAL PROVISIONS

Interpretation**1. In this Schedule—**

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

Existing documents

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

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

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

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

(a) S.I. 2002/1241.

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

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

(d) S.I. 2004/1219, amended by S.I. 2004/1236 and 2005/2400.

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

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

Outstanding applications

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

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

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

Decisions to remove under the 2000 Regulations

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

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

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

Appeals

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

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

(3) For the purpose of this paragraph—

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

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

► **Periods of residence prior to the entry into force of these Regulations**

6.—(1) Any period during which a person (“P”) who is an EEA national, carried out an activity or was resident in the United Kingdom in accordance with the condition in subparagraph (2) or (3) is to be treated as a period during which the person carried out that activity or was resident in the United Kingdom in accordance with these Regulations for the purpose of calculating periods of activity and residence there under.

(2) P carried out an activity, or was resident, in the United Kingdom in accordance with this subparagraph where such activity or residence was at that time in accordance with—

- (a) the 2000 Regulations;
- (b) the Immigration (European Economic Area) Order 1994^(a) (“the 1994 Order”); or
- (c) where such activity or residence preceded the entry into force of the 1994 Order, any of the following Directives which was at the relevant time in force in respect of the United Kingdom—
 - (i) Council Directive 64/221/EEC^(b);
 - (ii) Council Directive 68/360/EEC^(c);
 - (iii) Council Directive 72/194/EEC^(d);
 - (iv) Council Directive 73/148/EEC^(e);
 - (v) Council Directive 75/34/EEC^(f);
 - (vi) Council Directive 75/35/EEC^(g);
 - (vii) Council Directive 90/364/EEC^(h);
 - (viii) Council Directive 90/365/EEC⁽ⁱ⁾; and
 - (ix) Council Directive 93/96/EEC^(j).

(3) P carried out an activity or was resident in the United Kingdom in accordance with this subparagraph where P—

- (a) had leave to enter or remain in the United Kingdom; and
- (b) would have been carrying out that activity or residing in the United Kingdom in accordance with these Regulations had the relevant state been an EEA State at that time and had these Regulations at that time been in force.

¹Para. 6 of Sch. 4 substituted by Sch. 1, para. 25 of S.I. 2012/1547 as from 16.7.12.

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

(b) Series I Chapter 1963-1964 P.0117.

(c) Series I Chapter 1968(II) P.0485.

(d) Series I Chapter 1972(11) P.0474.

(e) OJ No L 172, 28.6.1973, p. 14–16.

(f) OJ No L 14, 20.1.1975, p. 10–13.

(g) OJ No L 14, 20.1.1975, p. 14.

(h) OJ No L 180, 13.7.1990, p. 26–27.

(i) OJ No L 180, 13.7.1990, p. 28–29.

(j) OJ No L 317, 18.12.1993, p. 59–60.

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(4) Any period during which P carried out an activity or was resident in the United Kingdom in accordance with subparagraph (2) or (3) will not be regarded as a period during which P carried out that activity or was resident in the United Kingdom in accordance with these Regulations where it was followed by a period—

- (a) which exceeded two consecutive years and for the duration of which P was absent from the United Kingdom; or
- (b) which exceeded two consecutive years and for the duration of which P's residence in the United Kingdom—
 - (i) was not in accordance with subparagraph (2) or (3); or
 - (ii) was not otherwise in accordance with these Regulations.

(5) The relevant state for the purpose of subparagraph (3) is the state of which P is, and was at the relevant time, a national.◀

[Schedule 5 makes amendments to S.I. 2004/1219 legislation not reproduced in these volumes.]

¹Sch. 5, para. 7 revoked by Sch. 1 to S.I. 2001/544 as from 1.5.11.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2004/38/EC of the European Parliament and the Council of 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. The Regulations come into force on 30th April 2006. A Transposition Note setting how the Government has transposed into UK law the main elements of this Directive will be available on the Office of Public Sector Information website.

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

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

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

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

- (i) the right of EEA nationals and their family members to be admitted to the United Kingdom provided they have the relevant documents (*regulation 11*);
- (ii) the right of EEA nationals and their family members to reside in the United Kingdom for an initial period of 3 months (*regulation 13*);
- (iii) the right of a “qualified person” (a jobseeker, worker, self-employed person, self-sufficient person or student), a family member a qualified person, and a “family member who has retained the right of residence” (for example, a family member of a deceased qualified person who satisfies

specified conditions) to reside in the United Kingdom for as long as they have this status (*regulation 14*); and

- (iv) the right of EEA nationals and their family members to permanent residence in the United Kingdom in specified circumstances (for example, after they have resided in the United Kingdom under the Regulations for 5 years (*regulation 15*)).

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