
EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations re-enact, with amendments, the provisions of the Immigration (European Economic Area) Order 1994 (“the EEA Order”). In addition, the Regulations create free-standing rights of appeal which (in contrast to the position under the EEA Order) are no longer dependent upon rights of appeal arising under the statutory provisions which apply to persons not claiming rights under European Community law. Those new appeal rights are set out in Part VII (regulations 27 to 36) of the Regulations. The Regulations also make certain other additions to the rules contained in the EEA Order.

2. In conjunction with the directly applicable rights arising under Commission Regulation 1251/70 (see paragraph 5 below), the Regulations provide a comprehensive scheme whereby Community nationals and their family members can assert rights of entry into, or residence in, the United Kingdom. The Regulations implement the Directives set out in paragraph 4 below. By virtue of the European Economic Area Agreement, rights under these Directives also extend to nationals of other States which are parties to that Agreement (namely Iceland, Liechtenstein and Norway).

3. The changes of substance to the rules contained in the EEA Order are as follows:

Regulation 8 provides that, for the purposes of the Immigration Act 1971 and the British Nationality Act 1981, certain persons are to be regarded as being in the United Kingdom without being subject under the immigration laws to any restriction on the period for which they may remain. These are persons who have rights to remain under Regulation 1251/70 and under Directive [75/34/EEC](#), together with those EEA nationals and family members who have been granted permission to remain under domestic immigration law.

Regulation 10 provides a power to treat certain extended-family members as “family members” for the purposes of exercising rights under the Regulations. This regulation implements Article 10(2) of Council Regulation [\(EEC\) No. 1612/68](#) on freedom of movement for workers within the Community (as applied by Article 1 of Directive [68/360/EEC](#)), and Article 1(2) of Directive [73/148/EEC](#).

Regulation 11 implements the judgment of the European Court of Justice in Case C-370/90 *R v Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department* [1992] ECR I-4265, by extending Community rights (in certain circumstances) to family members of a United Kingdom national.

Regulation 13 makes provision for the grant of an EEA family permit to family members. This provision was previously to be found in the Immigration Rules.

Regulation 22(3) enables an immigration officer to revoke the residence document held by a family member who is not an EEA national, when the latter arrives in the United Kingdom, if he is not at that time the family member of a qualified person. Regulation 22(4) enables an immigration officer to revoke an EEA family permit on those grounds, and on grounds of public policy, public security or public health.

Regulations 24 to 26 set out, in more detail than previously, how certain provisions of the 1971 Act are to be applied in the case of those whose rights are under scrutiny or have been refused.

Regulation 29 provides for a right to appeal against a decision taken under the Regulations or under Regulation 1251/70, where the decision concerns removal or admission, or the issue, renewal or revocation of residence permits or documents. A person who claims rights as a

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

family member must provide the documents required by regulation 33, and a person who claims to be an EEA national must provide the documents required by section 80(12) of the Immigration and Asylum Act 1999 (“the 1999 Act”). Regulation 29(4) applies (with modifications) the provisions of Parts I and III of Schedule 4 to the 1999 Act, to appeals to the adjudicator under these Regulations.

Regulation 30 sets out the circumstances in which an appeal against a decision concerning admission may only be made from outside the United Kingdom.

Regulation 31 sets out the circumstances in which an appeal must be made to the Special Immigration Appeals Commission, and regulation 32 makes consequential amendments to the Special Immigration Appeals Commission Act 1997 (“the 1997 Act”).

Regulation 34 adapts certain provisions of Part II of Schedule 4 to the 1999 Act (in particular, those providing for the stay of removal directions while an appeal is pending) to appeals to the adjudicator under these Regulations.

Regulation 35 provides that the new appeals provisions are to have effect only in relation to decisions taken on or after 2nd October 2000, and contains transitional provisions regarding the EEA Order.

Regulation 36 provides that the amendments made by regulation 32 have effect only in relation to decisions taken on or after 2nd October 2000, and contains transitional provisions regarding the 1997 Act.

4. These Regulations implement the following European Community Directives:

(1) Council Directive [64/221/EEC](#), on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.

(2) Council Directive [68/360/EEC](#), on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

(3) Council Directive [72/194/EEC](#), extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of Directive [64/221/EEC](#).

(4) Council Directive [73/148/EEC](#), on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services.

(5) Council Directive [75/34/EEC](#), concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity.

(6) Council Directive [75/35/EEC](#), extending the scope of Directive [64/211/EEC](#) to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity.

(7) Council Directive [90/364/EEC](#), on the right of residence.

(8) Council Directive [90/365/EEC](#), on the right of residence for employees and self-employed persons who have ceased their occupational activity.

(9) Council Directive [93/96/EEC](#), on the right of residence for students.

5. The rights given by these Regulations are supplemented by the directly applicable rights which arise under Commission Regulation (EEC) No. [1251/70](#), on the right of workers to remain in the territory of a Member State after having been employed in that State.