

2014 No. 1976

IMMIGRATION

**The Immigration (European Economic Area) (Amendment)
(No. 2) Regulations 2014**

<i>Made</i>	- - - -	<i>23rd July 2014</i>
<i>Laid before Parliament</i>		<i>25th July 2014</i>
<i>Coming into force</i>	- -	<i>28th July 2014</i>

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 the exercise of powers conferred by that section, and of the powers conferred by section 109 of the Nationality, Immigration and Asylum Act 2002(c), makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2014 and come into force on 28th July 2014.

Interpretation

2. In these Regulations, “the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006(d).

Amendments to the 2006 Regulations

3. The 2006 Regulations are amended as set out in the Schedule.

Transitional provision

4. The amendments made by these Regulations have no effect in relation to any decision under the 2006 Regulations to remove a person from the United Kingdom taken before these Regulations came into force.

(a) S.I. 2000/1813.

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and by section 3(3) of, and Part 1 of Schedule 1 to, the European Union (Amendment) Act 2008 (c. 7).

(c) 2002 c. 41.

(d) S.I. 2006/1003; relevant amending instruments are S.I. 2009/1117, 2012/1547, 2013/3032.

Home Office
23rd July 2014

James Brokenshire
Minister of State

SCHEDULE

Regulation 3

Amendments to the 2006 Regulations

Regulation 2 (general interpretation)

1. In regulation 2, in paragraph (1)—

(a) in the definition of “EEA decision”, after sub-paragraph (d), insert—

“;

but does not include decisions under regulations 24AA (human rights considerations and interim orders to suspend removal) or 29AA (temporary admission in order to submit case in person)”;

(b) in ““a qualifying EEA State residence card””, at the beginning, omit “a”.

Regulation 11 (right of admission to the United Kingdom)

2. In regulation 11, in paragraph (8), after “regulations 19(1)” insert “, (1A)”.

Regulation 15B (continuation of a right of residence)

3. In regulation 15B—

(a) in paragraphs (2)(b), (3)(b) and (4)(b), on each occasion when it occurs, omit “(within the meaning of section 104 of the 2002 Act)”;

(b) after paragraph (5), insert—

“(6) This regulation does not affect the ability of the Secretary of State to give directions for P’s removal while an appeal is pending or before it is finally determined.

(7) In this regulation, “pending” and “finally determined” have the meanings given in section 104 of the 2002 Act(a).”.

Regulation 19 (exclusion and removal from the United Kingdom)

4. In regulation 19, in paragraph (1A), at the end, insert “, except where the person is temporarily admitted pursuant to regulation 29AA”.

Regulation 22 (person claiming right of admission)

5. In regulation 22—

(a) in paragraph (1)(a), on the second occasion when it occurs, omit “or”;

(b) in paragraph (1)(b), at the end, insert “; or”;

(c) after paragraph (1)(b), insert—

“;

(c) a person to whom regulation 29AA applies”.

New regulation 24AA (human rights considerations and interim orders to suspend removal)

6. After regulation 24, insert—

(a) Section 104 was amended by section 26(7) of, and paragraph 20 of Schedule 2 to, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 9 of the Immigration, Asylum and Nationality Act 2006 (c. 13) and article 5(1) of, and paragraph 26 of Schedule 1 to, S.I. 2010/21.

“Human rights considerations and interim orders to suspend removal

24AA.—(1) This regulation applies where the Secretary of State intends to give directions for the removal of a person (“P”) to whom regulation 24(3) applies, in circumstances where—

- (a) P has not appealed against the EEA decision to which regulation 24(3) applies, but would be entitled, and remains within time, to do so from within the United Kingdom (ignoring any possibility of an appeal out of time with permission); or
- (b) P has so appealed but the appeal has not been finally determined.

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

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

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

- (a) where the expulsion decision is based on a previous judicial decision;
- (b) where P has had previous access to judicial review; or
- (c) where the removal decision is based on imperative grounds of public security.

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

Regulation 29 (effect of appeals to the First Tier Tribunal or Upper Tribunal)

7. In regulation 29—

- (a) in paragraph (2), after “United Kingdom”, on the second occasion when it occurs, insert “(other than a decision under regulation 19(1), (1A) or (1B))”;
- (b) in paragraph (3), after “United Kingdom”, on the second occasion when it occurs, insert “(other than a decision under regulation 19(3)(b))”;
- (c) after paragraph (4), insert—

“(4A) In paragraph (4), the words “except that he” to the end do not apply to an EEA decision to which regulation 24AA applies.”; and
- (d) in paragraph (5), at the end, insert “(except in cases where the EEA decision was taken pursuant to regulation 19(1), (1A), (1B) or (3)(b))”.

New regulation 29AA (temporary admission in order to submit case in person)

8. After regulation 29, insert—

“Temporary admission in order to submit case in person

29AA.—(1) This regulation applies where—

(a) 1998 c. 42; section 6 was amended by section 146 of, and Part 5 of Schedule 18 to, the Constitutional Reform Act 2005 (c. 4).

- (a) a person (“P”) was removed from the United Kingdom pursuant to regulation 19(3)(b);
- (b) P has appealed against the decision referred to in sub-paragraph (a);
- (c) a date for P’s appeal has been set by the First Tier Tribunal or Upper Tribunal; and
- (d) P wants to make submissions before the First Tier Tribunal or Upper Tribunal in person.

(2) P may apply to the Secretary of State for permission to be temporarily admitted (within the meaning of paragraphs 21 to 24 of Schedule 2 to the 1971 Act(a), as applied by this regulation) to the United Kingdom in order to make submissions in person.

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

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

(5) Where—

- (a) P is temporarily admitted to the United Kingdom pursuant to this regulation;
- (b) a hearing of P’s appeal has taken place; and
- (c) the appeal is not finally determined,

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

(6) Where the Secretary of State grants P permission to be temporarily admitted to the United Kingdom under this regulation, upon such admission P is to be treated as if P were a person refused leave to enter under the 1971 Act for the purposes of paragraphs 8, 10, 10A, 11, 16 to 18 and 21 to 24 of Schedule 2(b) to the 1971 Act.

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

- (a) the reference in paragraph 8(1) to leave to enter were a reference to admission to the United Kingdom under these Regulations; and
- (b) the reference in paragraph 16(1) to detention pending a decision regarding leave to enter or remain in the United Kingdom were to detention pending submission of P’s case in person in accordance with this regulation.

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

(a) The relevant parts of paragraphs 21 to 24 of Schedule 2 to the Immigration Act 1971 (c. 77) were amended by section 64(2) of, and Schedule 6 to, the Criminal Justice Act 1972 (c. 71), section 10 of, and paragraph 10(2) of the Schedule to, the Immigration Act 1988 (c. 14), section 12(1) of, and paragraphs 10 and 11 of Schedule 2 to, the Asylum and Immigration Act 1996 (c. 49), section 90(1) of, and paragraph 70 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 169(1) and (3) of, paragraphs 62 and 63 of Schedule 14 and Schedule 16 to, the Immigration and Asylum Act 1999 (c. 33), section 109(1) of, and paragraph 149 of Schedule 8 to, the Courts Act 2003 (c. 39), section 26(7) of, and paragraph 1(3) of Schedule 2 to, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 42(4) of the Immigration, Asylum and Nationality Act 2006 (c. 13), and article 5(1) of, and paragraph 2 of Schedule 1 to, S.I. 2010/21.

(b) Paragraph 10A of Schedule 2 to the Immigration Act 1971 was inserted by section 73(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41). The relevant parts of paragraphs 10 and 16 to 18 of Schedule 2 to the Immigration Act 1971 were amended by section 10 of, and paragraph 9(2) of the Schedule to, the Immigration Act 1988, section 12(3) of, and Schedule 4 to, the Asylum and Immigration Act 1996, sections 140 and 169(1) of, and paragraphs 60 and 61 of Schedule 14 to, the Immigration and Asylum Act 1999, and sections 63, 64 and 73(5) of the Nationality, Immigration and Asylum Act 2002 (c. 41).

Schedule 2 (effect on other legislation)

9. In Schedule 2, in paragraph 3 (carriers' liability under Part II of the Immigration and Asylum Act 1999(a)), after "a qualifying EEA State residence card", insert ", permission to be temporarily admitted under regulation 29AA".

(a) 1999 c.33; section 40 was substituted by section 125 of, and paragraph 13 of Schedule 8 to, the Nationality, Immigration and Asylum Act 2002.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003), as amended, (“the 2006 Regulations”) in order to amend the transposition in the United Kingdom of Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ No. L 158, 30.4.04, p77) (“Directive 2004/38/EC”).

The amendments made by these Regulations provide that appeals against decisions taken under the 2006 Regulations to deport a person from the United Kingdom, when brought from within the United Kingdom, no longer have the effect of suspending enforcement of the removal decision. This reflects Article 31(4) of Directive 2004/38/EC, which permits member States to exclude an individual from their territory pending the appeals process.

Paragraph 7 of the Schedule to the Regulations (“the Schedule”) amends regulation 29 of the 2006 Regulations to prevent appeals against deportation decisions from having the effect of preventing the giving of, or execution of, removal directions.

Paragraph 6 of the Schedule inserts a new regulation 24AA into the 2006 Regulations. This provision is based on section 94B of the Nationality, Immigration and Asylum Act 2002 (c. 41), as inserted by section 17(3) of the Immigration Act 2014 (c. 22). It also reflects the requirements of Article 31(2) of Directive 2004/38/EC. It provides that where a person has not appealed against a deportation decision made under regulation 24(3) of the 2006 Regulations, but would be able to do so at that time from within the United Kingdom, or has appealed but the appeal has not been finally determined, the Secretary of State may only give directions for the removal of that person from the United Kingdom if the Secretary of State certifies that the person’s removal would not be unlawful under section 6 of the Human Rights Act 1998 (c. 42). Section 6 of that Act provides that it is unlawful for a public authority to act in a way which is incompatible with a right under the European Convention on Human Rights. Paragraph (3) of the new regulation 24AA provides that, in particular, the grounds upon which the Secretary of State may certify that a removal would not breach section 6 of the Human Rights Act include that the person concerned would not face a real risk of serious irreversible harm in the country or territory to which they are to be removed. Paragraph (4) of the new regulation 24AA provides that where a person applies to the appropriate court or tribunal for an interim order to suspend enforcement of the removal decision, their removal may not take place until such time as the decision on the interim order has been taken by the court or tribunal in question. Paragraph (4) lists certain exemptions to this principle, taken directly from Article 31(2) of Directive 2004/38/EC.

Paragraph 8 of the Schedule inserts a new regulation 29AA into the 2006 Regulations to enable those removed from the United Kingdom before their appeal is heard or finally determined to apply for permission to be temporarily admitted to the United Kingdom in order to present their case in person. This is a requirement of Article 31(4) of Directive 2004/38/EC. The new regulation 29AA applies the temporary admission powers contained in paragraphs 21 to 24 of Schedule 2 to the Immigration Act 1971 (c. 77).

Paragraph (5) of the new regulation 29AA provides that once a person has been temporarily admitted to submit their case in person, they may be removed from the United Kingdom once they have submitted their case in person. Should the person concerned need to return to the United Kingdom in order to submit their case in person on a future occasion (for example, in an appeal to the Upper Tribunal), it will be possible for that person to apply for temporary admission to return to the United Kingdom for that purpose.

Paragraph 2 of the Schedule clarifies regulation 11 of the 2006 Regulations (right of admission to the United Kingdom) does not apply where a person is subject to a deportation or exclusion order made under the 2006 Regulations.

The remainder of these Regulations makes minor and consequential amendments.

An impact assessment has not been produced for these Regulations as no impact on businesses, charities, voluntary bodies or the public sector is foreseen.

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