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STATUTORY INSTRUMENTS

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**2016 No. 1052**

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

**PART 6**

**APPEALS UNDER THESE REGULATIONS**

**Interpretation of Part 6**

**35.**—(1) In this Part—

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997(1);

“Commission” has the same meaning as in the 1997 Act.

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treated as pending during the period when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.

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is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.

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

**Appeal rights**

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

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

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

(a) a valid passport; and

(b) either—

(i) an EEA family permit; or

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

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

(a) a valid passport; and

- (b) either—
- (i) an EEA family permit
  - (ii) a qualifying EEA State residence card;
  - (iii) in the case of a person claiming to be the family member of an EEA national, proof that the criteria in regulation 7 are met; or
  - (iv) in the case of a person claiming to be a family member who has retained the right of residence, proof that the criteria in regulation 10 are met.
- (5) If a person (“P”) claims to have a derivative right to reside, P may not appeal under these Regulations unless P produces a valid national identity card issued by an EEA State or a valid passport, and either—
- (a) an EEA family permit; or
  - (b) where P claims to have a derivative right to reside as a result of—
    - (i) regulation 16(2), proof that P is a direct relative or legal guardian of an EEA national who is under the age of 18;
    - (ii) regulation 16(3), proof that P is the child of an EEA national;
    - (iii) regulation 16(4), proof that P is a direct relative or legal guardian of the child of an EEA national;
    - (iv) regulation 16(5), proof that P is a direct relative or legal guardian of a British citizen;
    - (v) regulation 16(6), proof that P is under the age of 18 and is a dependant of a person satisfying the criteria in paragraph (i), (iii) or (iv).
- (6) If a person claims to be entitled to a right to reside under regulation 9 (family members of British citizens), that person may not appeal without producing a valid passport and either—
- (a) an EEA family permit; or
  - (b) a qualifying EEA State residence card; and
    - (i) proof that the criteria to be a family member of the British citizen are met; and
    - (ii) proof that the British citizen is residing, or did reside, in another EEA State as a worker, self-employed person, self-sufficient person or student.
- (7) The Secretary of State or an immigration officer may certify a ground for the purposes of paragraph (8) if it has been considered in a previous appeal brought under these Regulations or under section 82(1) of the 2002 Act<sup>(2)</sup>.
- (8) A person may not bring an appeal under these Regulations on a ground certified under paragraph (7) or rely on such a ground in an appeal brought under these Regulations.
- (9) Except where an appeal lies to the Commission, an appeal under these Regulations lies to the First-tier Tribunal.
- (10) The provisions of, or made under, the 2002 Act referred to in Schedule 2 have effect for the purposes of an appeal under these Regulations to the First-tier Tribunal in accordance with that Schedule.
- (11) Nothing in this Part prevents a person who has a right of appeal under this regulation from appealing to the First-tier Tribunal under section 82(1) of the 2002 Act (right of appeal to the Tribunal), or, where relevant, to the Commission pursuant to section 2 of the 1997 Act (jurisdiction of the Commission: appeals)<sup>(3)</sup>, provided the criteria for bringing such an appeal under those Acts are met.

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

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

### **Out of country appeals**

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

- (a) to refuse to admit that person to the United Kingdom;
- (b) to revoke that person's admission to the United Kingdom;
- (c) to make an exclusion order against that person;
- (d) to refuse to revoke a deportation or exclusion order made against the person;
- (e) to refuse to issue the person with an EEA family permit;
- (f) to revoke, or to refuse to issue or renew any document under these Regulations where that decision is taken at a time when the person is outside the United Kingdom; or
- (g) to remove the person from the United Kingdom following entry to the United Kingdom in breach of a deportation or exclusion order, or in circumstances where that person was not entitled to be admitted pursuant to regulation 23(1), (2), (3) or (4).

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

- (a) the person holds a valid EEA family permit, registration certificate, residence card, derivative residence card, document certifying permanent residence, permanent residence card or qualifying EEA State residence card on arrival in the United Kingdom or the person can otherwise prove that the person is resident in the United Kingdom; or
- (b) the person is deemed not to have been admitted to the United Kingdom under regulation 29(3) but at the date on which notice of the decision to refuse admission is given the person has been in the United Kingdom for at least 3 months.

### **Appeals to the Commission**

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

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

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

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

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

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

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

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

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

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

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

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

### **National Security: EEA Decisions**

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

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

- (a) the references in that section to a deportation order were to an EEA decision;
- (b) subsections (1), (1A), (2)(b) and (4) were omitted;
- (c) the reference in subsection (2)(a) to section 79 were a reference to regulations 37(2) and 40 of these Regulations; and
- (d) in subsection (2A) for sub-paragraphs (a) and (b), “against an EEA decision” were substituted.

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

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

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

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

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

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

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

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

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

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

(7) Paragraph 29 of Schedule 2 to the 1971 Act (grant of bail pending appeal)(5) 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.

### **Temporary admission to submit case in person**

**41.**—(1) This regulation applies where—

- (a) a person (“P”) is subject to a decision to remove made under regulation 23(6)(b);
- (b) P has appealed against the decision referred to in sub-paragraph (a);
- (c) a date for P’s appeal has been set by the First-tier Tribunal or Upper Tribunal;
- (d) P wants to make submissions before the First-tier Tribunal or Upper Tribunal in person; and
- (e) P is outside the United Kingdom.

(2) P may apply to the Secretary of State for permission to be temporarily admitted (within the meaning of paragraphs 21 to 24 of Schedule 2 to the 1971 Act, 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 appeal (but P may apply to return to the United Kingdom to make submissions in person during the remaining stages of the appeal in accordance with this regulation).

(6) Where the Secretary of State grants P permission to be temporarily admitted to the United Kingdom under this regulation, upon such admission P is to be treated as if P were a person refused leave to enter under the 1971 Act for the purposes of paragraphs 8, 10, 10A, 11, 16 to 18A and 21 to 24 of Schedule 2 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 is deemed not to have been admitted to the United Kingdom during any time during which P is temporarily admitted pursuant to this regulation.

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(5) Paragraph 29 was amended by the 2002 Act, Schedule 7, paragraph 6, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Schedule 2, paragraph 1, and Schedule 4, and the Immigration Act 2014, section 7, [SI 2010/21](#), Schedule 1, paragraphs 1 and 2.

**Alternative evidence of identity and nationality**

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

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