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STATUTORY INSTRUMENTS

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**2006 No. 1003**

The Immigration (European Economic Area) Regulations 2006

**PART 6**

APPEALS UNDER THESE REGULATIONS

**Interpretation of Part 6**

25.—(1) In this Part—

<sup>F1</sup>  
...

[<sup>F2</sup>“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 <sup>M1</sup>;

<sup>F3</sup>  
.....

[<sup>F2</sup>“Human rights claim” has the meaning given in section 113(1) of the 2002 Act.]

<sup>F3</sup>  
.....

(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treated as pending during the period when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.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is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.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.

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**Textual Amendments**

- F1** Words in reg. 25(1) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 2 para. 22** (with Sch. 4 para. 1)
- F2** Words in reg. 25(1) inserted (16.7.2012) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2012 \(S.I. 2012/1547\)](#), reg. 2(1), **Sch. 1 para. 19(b)** (with Sch. 3)
- F3** Words in reg. 25(1) deleted (16.7.2012) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2012 \(S.I. 2012/1547\)](#), reg. 2(1), **Sch. 1 para. 19(a)** (with Sch. 3)
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**Marginal Citations**

- M1** 1997 c. 68.

**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.

[<sup>F4</sup>(2A) If a person claims to be in a durable relationship with an EEA national he may not appeal under these Regulations unless he produces—

- (a) a passport; and
- (b) either—
  - (i) an EEA family permit; or
  - (ii) sufficient evidence to satisfy the Secretary of State that he is in a relationship with that EEA national. ]

[<sup>F5</sup>(3) If a person [<sup>F6</sup> to whom paragraph (2) does not apply ] 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) <sup>F7</sup> ... .. <sup>F7</sup> ... 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.]

[<sup>F8</sup>(3A) If a person claims to be a person with a derivative right of [<sup>F9</sup> entry or ] residence he may not appeal under these Regulations unless he produces 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 [<sup>F10</sup> a derivative right of entry or residence as a result of ] 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 [<sup>F10</sup> a derivative right of entry or residence as a result of ] regulation 15A(3), he is the child of an EEA national;
  - (iii) where the person claims to have [<sup>F10</sup> a derivative right of entry or residence as a result of ] regulation 15A(4), he is a direct relative or guardian of the child of an EEA national;
  - (iv) where the person claims to have [<sup>F10</sup> a derivative right of entry or residence as a result of] regulation 15A(5), he is under the age of 18 and is a dependant of a person satisfying the criteria in [<sup>F11</sup>(i) or (iii)];]
  - [<sup>F12</sup>(v) where the person claims to have a derivative right of entry or residence as a result of regulation 15A(4A), he is a direct relative or guardian of a British citizen.]

(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 <sup>M2</sup> .

(6) Except where an appeal lies to the Commission, an appeal under these Regulations lies to the [<sup>F13</sup>First-tier 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 [<sup>F13</sup>First-tier Tribunal] in accordance with that Schedule.

#### Textual Amendments

- F4** Reg. 26(2A) inserted (8.11.2012) by The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/2560), reg. 1, **Sch. para. 5(a)**
- F5** Reg. 26(3) substituted (16.7.2012) by The Immigration (European Economic Area) (Amendment) Regulations 2012 (S.I. 2012/1547), reg. 2(1), **Sch. 1 para. 20(a)** (with Sch. 3)
- F6** Words in reg. 26(3) inserted (8.11.2012) by The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/2560), reg. 1, **Sch. para. 5(b)**
- F7** Words in reg. 26(3)(a) omitted (8.11.2012) by virtue of The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/2560), reg. 1, **Sch. para. 5(c)**
- F8** Reg. 26(3A) inserted (16.7.2012) by The Immigration (European Economic Area) (Amendment) Regulations 2012 (S.I. 2012/1547), reg. 2(1), **Sch. 1 para. 20(b)** (with Sch. 3)
- F9** Words in reg. 26(3A) inserted (8.11.2012) by The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/2560), reg. 1, **Sch. para. 5(d)**
- F10** Words in reg. 26(3A)(b) substituted (8.11.2012) by The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/2560), reg. 1, **Sch. para. 5(e)**
- F11** Words in reg. 26(3A)(b)(iv) substituted (8.11.2012) by The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/2560), reg. 1, **Sch. para. 5(f)**
- F12** Reg. 26(3A)(b)(v) inserted (8.11.2012) by The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/2560), reg. 1, **Sch. para. 5(f)**
- F13** Words in reg. 26(6)(7) substituted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 1, **Sch. 2 para. 23** (with Sch. 4 para. 1)

#### Modifications etc. (not altering text)

- C1** Reg. 26 applied (1.7.2013) by The Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (S.I. 2013/1460), regs. 1(1), **6(2)(b)** (with reg. 11(8))

#### Marginal Citations

- M2** Section 82(1) is amended by section 26 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (c. 19).

### 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;
- [<sup>F14</sup>(aa) to make an exclusion order against him;]
- (b) to refuse to revoke a deportation [<sup>F15</sup>or exclusion] order made against him;
- (c) to refuse to issue him with an EEA family permit;
- [<sup>F16</sup>(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]
- [<sup>F17</sup>(d) to remove him from the United Kingdom after he has entered the United Kingdom in breach of a deportation or exclusion order.]

- (2) [<sup>F18</sup>Paragraphs (1)(a) and (aa) do not apply where the person is in the United Kingdom and]—
- (a) the person held [<sup>F19</sup>a valid EEA family permit, registration certificate, residence card, [<sup>F20</sup>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; [<sup>F21</sup>or]
- [<sup>F22</sup>(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.]
- [<sup>F23</sup>(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.]

#### Textual Amendments

- F14** Reg. 27(1)(aa) inserted (1.6.2009) by [Immigration \(European Economic Area\) \(Amendment\) Regulations 2009 \(S.I. 2009/1117\)](#), reg. 1, **Sch. 1 para. 12(a)(i)**
- F15** Words in reg. 27(1)(b) inserted (1.6.2009) by [Immigration \(European Economic Area\) \(Amendment\) Regulations 2009 \(S.I. 2009/1117\)](#), reg. 1, **Sch. 1 para. 12(a)(ii)**
- F16** Reg. 27(ca) inserted (16.7.2012) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2012 \(S.I. 2012/1547\)](#), reg. 2(1), **Sch. 1 para. 21(a)** (with Sch. 3)
- F17** Reg. 27(1)(d) substituted (1.6.2009) by [Immigration \(European Economic Area\) \(Amendment\) Regulations 2009 \(S.I. 2009/1117\)](#), reg. 1, **Sch. 1 para. 12(a)(iii)**
- F18** Words in reg. 27(2) substituted (1.6.2009) by [Immigration \(European Economic Area\) \(Amendment\) Regulations 2009 \(S.I. 2009/1117\)](#), reg. 1, **Sch. 1 para. 12(b)(i)**
- F19** Words in reg. 27(2)(a) substituted (1.6.2009) by [Immigration \(European Economic Area\) \(Amendment\) Regulations 2009 \(S.I. 2009/1117\)](#), reg. 1, **Sch. 1 para. 12(b)(ii)**
- F20** Words in reg. 27(2)(a) inserted (16.7.2012) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2012 \(S.I. 2012/1547\)](#), reg. 2(1), **Sch. 1 para. 21(b)** (with Sch. 3)
- F21** Word in reg. 27(2)(b) inserted (1.6.2009) by [Immigration \(European Economic Area\) \(Amendment\) Regulations 2009 \(S.I. 2009/1117\)](#), reg. 1, **Sch. 1 para. 12(b)(iii)**
- F22** Reg. 27(2)(c) substituted (16.7.2012) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2012 \(S.I. 2012/1547\)](#), reg. 2(1), **Sch. 1 para. 21(c)** (with Sch. 3)
- F23** Reg. 27(3) substituted (16.7.2012) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2012 \(S.I. 2012/1547\)](#), reg. 2(1), **Sch. 1 para. 21(d)** (with Sch. 3)

#### 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).
- (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 [F24First-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.

#### Textual Amendments

**F24** Words in reg. 28(6) substituted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 2 para. 24** (with Sch. 4 para. 1)

#### Effect of appeals to the [F25First-tier Tribunal or Upper Tribunal]

**29.**—(1) This Regulation applies to appeals under these Regulations made to the [F26First-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.

*Status: Point in time view as at 01/07/2013.*

*Changes to legislation: There are currently no known outstanding effects for the The Immigration (European Economic Area) Regulations 2006, PART 6. (See end of Document for details)*

(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.

#### Textual Amendments

- F25** Words in reg. 29(1) heading substituted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#) , art. 1 , **Sch. 2 para. 25** (with Sch. 4 para. 1 )
- F26** Words in reg. 29(1) substituted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#) , art. 1 , **Sch. 2 para. 25** (with Sch. 4 para. 1 )

#### [<sup>F27</sup>Alternative evidence of identity and nationality

**29A.**—(1) Subject to paragraph (2), where a provision of these Regulations requires a person to hold or produce a valid 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 his or her control.

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

#### Textual Amendments

- F27** Reg. 29A inserted (8.11.2012) by [The Immigration \(European Economic Area\) \(Amendment\) \(No. 2\) Regulations 2012 \(S.I. 2012/2560\)](#), reg. 1, **Sch. para. 6**

**Status:**

Point in time view as at 01/07/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the The Immigration (European Economic Area) Regulations 2006, PART 6.