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STATUTORY INSTRUMENTS

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**2009 No. 1117**

**IMMIGRATION**

**The Immigration (European Economic Area) (Amendment) Regulations 2009**

<i>Made</i>	- - - -	<i>30th April 2009</i>
<i>Laid before Parliament</i>		<i>5th May 2009</i>
<i>Coming into force</i>	- -	<i>1st June 2009</i>

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purpose of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred by that section, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2009 and shall come into force on 1<sup>st</sup> June 2009.

**Amendment of the Immigration (European Economic Area) Regulations 2006**

2. The Immigration (European Economic Area) Regulations 2006<sup>(3)</sup> are amended as set out in Schedule 1.

**Consequential amendments**

3. Schedule 2 (consequential amendments) shall have effect.

Home Office  
30th April 2009

*Phil Woolas*  
Minister of State

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(1) [S.I. 2000/1813](#).  
(2) [1972 c. 68](#).  
(3) [S.I. 2006/1003](#).

## SCHEDULE 1

## Regulation 2

## Amendments to the Immigration (European Economic Area) Regulations 2006

**Regulation 2 (general interpretation)**

1. In regulation 2 –
  - (a) in paragraph (1) —
    - (i) after the definition of “decision maker” insert –
 

““deportation order” means an order made pursuant to regulation 24(3);”;
    - (ii) after the definition of “entry clearance officer” insert –
 

““exclusion order” means an order made under regulation 19(1B);”;
  - (b) after paragraph (2) insert –
 

“(3) Section 11 of the 1971 Act (construction of references to entry)(4) 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.”.

**Regulation 3 (continuity of residence)**

2. In regulation 3(3), for “regulation 19(3)” substitute “these Regulations”.

**Regulation 12 (issue of EEA family permit)**

3. In regulation 12(5), after “concerned” insert “is subject to a deportation or exclusion order or”.

**Regulation 17 (issue of residence card)**

4. In regulation 17 —
  - (a) in paragraph (6), omit “entitled “Residence card of a family member of an EEA national” and be”;
  - (b) after paragraph (6), insert—
 

“(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.”;
  - (c) in paragraph (8), for “regulation 20(1)”, substitute “regulations 20(1) and (1A)”.

**Regulation 18 (issue of document certifying permanent residence and a permanent residence card)**

5. In regulation 18 –
  - (a) in paragraph (3) omit “and regulation 20(3)”;
  - (b) after paragraph (5), insert—
 

“(6) But this regulation is subject to regulation 20.”.

(4) 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).

### **Regulation 19 (exclusion and removal from the United Kingdom)**

6. In regulation 19 —

(a) after paragraph (1) insert —

“(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.”;

(b) for paragraph (3) substitute —

“(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.”.

### **Regulation 20 (refusal to issue or renew and revocation of residence documentation)**

7. In regulation 20 —

(a) after paragraph (1) insert —

“(1A) The removal of a person from the United Kingdom under these Regulations invalidates 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.”;

(b) in paragraph (5), for “An immigration officer may, at the time of a person’s arrival in the United Kingdom, revoke that person’s”, substitute “An entry clearance officer or immigration officer may at any time revoke a person’s”.

### **Regulation 22 (person claiming right of admission)**

8. For regulation 22(1)(b), substitute—

“(b) an EEA national, where there is reason to believe that he may fall to be excluded under regulation 19(1) or (1A).”.

### **Regulation 23 (person refused admission)**

9. In regulation 23(1)(b), for “19(1) or (2)” substitute “19(1), (1A) or (2)”.

### **Regulation 24 (person subject to removal)**

10. In regulation 24 —

(a) for paragraph (1) substitute —

“(1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the United Kingdom under regulation 19(3), that person may be detained under the authority of an immigration officer pending a decision whether or not to remove

*Status: This is the original version (as it was originally made).*

the person under that regulation, and paragraphs 17 and 18 of Schedule 2 to the 1971 Act<sup>(5)</sup> 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.”;

- (b) in paragraphs (2) and (3), for “Where the decision is” substitute – “Where a decision is taken to remove a person”;
- (c) for paragraph (4) substitute –
  - “(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.”.

### **New regulation 24A (revocation of deportation and exclusion orders)**

11. After regulation 24 insert—

#### **“Revocation 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 the order can no longer be justified on grounds of public policy, public security or public health in accordance with regulation 21.

(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.”.

### **Regulation 27 (out of country appeals)**

12. In regulation 27 —

- (a) in paragraph (1) –
  - (i) after sub-paragraph (a) insert –
    - “(aa) to make an exclusion order against him;”;
  - (ii) in sub-paragraph (b), after “deportation” insert “or exclusion”;
  - (iii) for sub-paragraph (d) substitute –
    - “(d) to remove him from the United Kingdom after he has entered the United Kingdom in breach of a deportation or exclusion order.”;
- (b) in paragraph (2) –
  - (i) for “Paragraph (1)(a) does not apply where” substitute “Paragraphs (1)(a) and (aa) do not apply where the person is in the United Kingdom and”;

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(5) 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.

- (ii) in sub-paragraph (a), for “an EEA family permit, a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card” substitute “a valid EEA family permit, registration certificate, residence card, document certifying permanent residence or permanent residence card”;
- (iii) in sub-paragraph (b), after “3 months;” insert “or”;
- (iv) in sub-paragraph (c), omit “the person is in the United Kingdom and”.

## SCHEDULE 2

Regulation 3

### CONSEQUENTIAL AMENDMENTS

#### *Act of Parliament*

##### *The Child Trust Funds Act 2004*

1. In section 2 of the Child Trust Funds Act 2004<sup>(6)</sup> (definition of “eligible children”), for subsection (5)(b) substitute —

- “(b) is not entitled to enter or remain in the United Kingdom by virtue of an enforceable Community right or any provision made under section 2(2) of the European Communities Act 1972, and”.

#### *Statutory Instrument*

##### *Immigration (Notices) Regulations 2003*

2. In regulation 2 of the Immigration (Notices) Regulations 2003<sup>(7)</sup>(interpretation), for the definition of “EEA decision” substitute –

““EEA Decision” means a decision under the Immigration (European Economic Area) Regulations 2006 that concerns a person’s

- (a) entitlement to be admitted to the United Kingdom;
- (b) entitlement to be issued with or have renewed, or not to have revoked, a registration certificate, residence card, document certifying permanent residence or permanent residence card; or
- (c) removal from the United Kingdom;”.

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<sup>(6)</sup> 2004 c.6.

<sup>(7)</sup> S.I. 2003/658, amended by S.I. 2006/2168, S.I. 2007/3187, S.I. 2008/684 and S.I. 2008/1819.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Immigration (European Economic Area) Regulations 2006, which implement Directive [2004/38/EC](#) of the European Parliament and the Council of 29<sup>th</sup> 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. The 2006 Regulations confer free movement rights on EEA nationals and their family members. “EEA nationals” includes European Union citizens from other Member States and nationals from Norway, Iceland, Liechtenstein and Switzerland, nationals from these States benefiting from free movement rights by virtue of agreements with the European Community.

The amendments to the 2006 Regulations are set out in *Schedule 1* to these Regulations. The amendments can be grouped into those relating to the provision of exclusion orders and minor procedural amendments.

Regulation 19 of the 2006 Regulations is being amended to enable the Secretary of State to make *exclusion orders* on the grounds of public policy, public security or public health prohibiting an EEA national or family member of an EEA national from entering the UK under the 2006 Regulations. An exclusion order will be issued against a person who has not entered the UK. Deportation orders will continue to be used against EEA nationals and their family members who have entered the UK where their exclusion and removal is justified on grounds of public policy, public security or public health. A number of related changes have been made to regulations 20 to 24 of the 2006 Regulations, including a power to detain a person where there are reasonable grounds for suspecting that the person may be removable under regulation 19. And a new regulation – regulation 24A – has been inserted into the 2006 Regulations providing for the revocation of deportation and exclusion orders.

Schedule 1 contains a number of *additional amendments* relating to the above amendments or making minor changes to the 2006 Regulations.

Schedule 2 contains consequential amendments to other legislation. The amendments are consequential on the 2006 Regulations.