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STATUTORY INSTRUMENTS

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**2016 No. 1052**

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

**PART 4**

**REFUSAL OF ADMISSION AND REMOVAL ETC**

**Exclusion and removal from the United Kingdom**

**23.**—(1) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if a refusal to admit that person is justified on grounds of public policy, public security or public health in accordance with regulation 27.

(2) 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, except where the person is temporarily admitted pursuant to regulation 41.

(3) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if the Secretary of State considers there to be reasonable grounds to suspect that the person's admission would lead to the misuse of a right to reside under regulation 26(1).

(4) A person is not entitled to be admitted to the United Kingdom as the family member of an EEA national under regulation 11(2) unless, at the time of arrival—

- (a) that person is accompanying the EEA national or joining the EEA national in the United Kingdom; and
- (b) the EEA national has a right to reside.

(5) If the Secretary of State considers that the exclusion of the 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 27 the Secretary of State may make an order prohibiting that person from entering the United Kingdom.

(6) Subject to paragraphs (7) and (8), 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;
- (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 27; or
- (c) the Secretary of State has decided that the person's removal is justified on grounds of misuse of rights under regulation 26(3).

(7) A person must not be removed under paragraph (6)—

- (a) as the automatic consequence of having recourse to the social assistance system of the United Kingdom; or
- (b) if that person has leave to remain in the United Kingdom under the 1971 Act unless that person's removal is justified on the grounds of public policy, public security or public health in accordance with regulation 27.

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*Changes to legislation: There are currently no known outstanding effects for the The Immigration (European Economic Area) Regulations 2016, PART 4. (See end of Document for details)*

(8) A decision under paragraph (6)(b) must state that upon execution of any deportation order arising from that decision, the person against whom the order was made is prohibited from entering the United Kingdom—

- (a) until the order is revoked; or
- (b) for the period specified in the order.

(9) A decision taken under paragraph (6)(b) or (c) has the effect of terminating any right to reside otherwise enjoyed by the individual concerned.

### **Refusal to issue or renew and revocation of residence documentation**

**24.**—(1) The Secretary of State may refuse to issue, revoke or refuse to renew a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card if the refusal or revocation is justified on grounds of public policy, public security or public health, or on grounds of misuse of rights in accordance with regulation 26(3).

(2) A decision under regulation 23(6) or 32(4) to remove a person from the United Kingdom, or a decision under regulation 31 to revoke a person's admission to the United Kingdom 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.

(3) The Secretary of State may revoke or refuse to renew a registration certificate or a residence card if the holder of the certificate or card has ceased to have, or never had, a right to reside under these Regulations.

(4) The Secretary of State may revoke or refuse to renew a document certifying permanent residence or a permanent residence card if the holder of the certificate or card has ceased to have, or never had, a right of permanent residence under regulation 15.

(5) An immigration officer may, at the time of a person's arrival in the United Kingdom—

- (a) revoke that person's residence card if the person is not at that time the family member of a qualified person or of an EEA national who has a right of permanent residence under regulation 15, a family member who has retained a right of residence or a person with a right of permanent residence under regulation 15;
- (b) revoke that person's permanent residence card if the person is not at that time a person with a right of permanent residence under regulation 15.

(6) An entry clearance officer [<sup>F1</sup>or an immigration officer] may at any time revoke a person's EEA family permit<sup>F2</sup>, including one issued in electronic form,] if—

- (a) the revocation is justified on grounds of public policy, public security or public health; or
- (b) the person is not at that time the family member of an EEA national with the right to reside in the United Kingdom under these Regulations or is not accompanying that EEA national or joining that EEA national in the United Kingdom.

(7) Any action taken under this regulation on grounds of public policy, public security or public health must be in accordance with regulation 27.

#### **Textual Amendments**

**F1** Words in reg. 24(6) inserted (31.1.2017) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2017 \(S.I. 2017/1\)](#), reg. 1(2), **Sch. para. 3**

**F2** Words in [reg. 24\(6\)](#) inserted (24.7.2018) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2018 \(S.I. 2018/801\)](#), reg. 1(2), **Sch. para. 12**

### **Cancellation of a right of residence**

25.—(1) Where the conditions in paragraph (2) are met the Secretary of State may cancel a person's right to reside.

- (2) The conditions in this paragraph are met where—
- (a) a person has a right to reside in the United Kingdom as a result of these Regulations;
  - (b) the Secretary of State has decided that the cancellation of that person's right to reside in the United Kingdom is justified on the grounds of public policy, public security or public health in accordance with regulation 27 or on grounds of misuse of rights in accordance with regulation 26(3);
  - (c) the circumstances are such that the Secretary of State cannot make a decision under regulation 24(1); and
  - (d) it is not possible for the Secretary of State to remove the person from the United Kingdom under regulation 23(6)(b) or (c).

### **Misuse of a right to reside**

26.—(1) The misuse of a right to reside occurs where a person—

- (a) observes the requirements of these Regulations in circumstances which do not achieve the purpose of these Regulations (as determined by reference to Council [Directive 2004/38/EC\(1\)](#) and the EU Treaties); and
- (b) intends to obtain an advantage from these Regulations by engaging in conduct which artificially creates the conditions required to satisfy the criteria set out in these Regulations.

(2) Such misuse includes attempting to enter the United Kingdom within 12 months of being removed under regulation 23(6)(a), where the person attempting to do so is unable to provide evidence that, upon re-entry to the United Kingdom, the conditions for a right to reside, other than the initial right of residence under regulation 13, will be met.

(3) The Secretary of State may take an EEA decision on the grounds of misuse of rights where there are reasonable grounds to suspect the misuse of a right to reside and it is proportionate to do so.

(4) Where, as a result of paragraph (2), the removal of a person under regulation 23(6)(a) may prevent that person from returning to the United Kingdom during the 12 month period following removal, during that 12 month period the person who was removed may apply to the Secretary of State to have the effect of paragraph (2) set aside on the grounds that there has been a material change in the circumstances which justified that person's removal under regulation 23(6)(a).

(5) An application under paragraph (4) may only be made whilst the applicant is outside the United Kingdom.

(6) This regulation may not be invoked systematically.

### **Decisions taken on grounds of public policy, public security and public health**

27.—(1) In this regulation, a "relevant decision" means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

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(1) OJNo. L 158, 30.4.04, p77.

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- (a) [F3 has a right of permanent residence under regulation 15 and who] has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or
- (b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989(2).

(5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—

- (a) the decision must comply with the principle of proportionality;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person’s previous criminal convictions do not in themselves justify the decision;
- (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person (“P”) who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P’s length of residence in the United Kingdom, P’s social and cultural integration into the United Kingdom and the extent of P’s links with P’s country of origin.

(7) In the case of a relevant decision taken on grounds of public health—

- (a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010(3); or
- (b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom,

does not constitute grounds for the decision.

(8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).

#### Textual Amendments

**F3** Words in reg. 27(4)(a) inserted (24.7.2018) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2018 \(S.I. 2018/801\)](#), reg. 1(2), **Sch. para. 13**

#### Application of Part 4 to a person with a derivative right to reside

**28.**—(1) This regulation applies where a person—

(2) Treaty Series No. 44 (1992) Cmd 1976 at <http://treaties.fco.gov.uk/docs/pdf/1992/TS0044.pdf>.  
 (3) [S.I. 2010/659](#).

- (a) would, but for this Part of these Regulations, be entitled to a derivative right to reside (other than a derivative right to reside conferred by regulation 16(3));
  - (b) holds a derivative residence card; or
  - (c) has applied for a derivative residence card.
- (2) Where this regulation applies, this Part of these Regulations applies as though—
- (a) references to “the family member of an EEA national” referred instead to “a person with a derivative right to reside”;
  - (b) references to a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card referred instead to a “derivative residence card”;
  - (c) regulation 24(5) instead conferred on an immigration officer the power to revoke a derivative residence card where the holder is not at that time a person with a derivative right to reside; and
  - (d) regulations 24(4) and 27(3) and (4) were omitted.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the The Immigration (European Economic Area) Regulations 2016, PART 4.