



EUROPEAN COMMUNITIES (ISLE OF MAN) ACT 1973

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

**IMMIGRATION (EUROPEAN ECONOMIC AREA)
REGULATIONS 2009**

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EUROPEAN COMMUNITIES (ISLE OF MAN) ACT 1973
NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002
**IMMIGRATION (EUROPEAN ECONOMIC AREA)
REGULATIONS 2009**

Laid before Tynwald 20 October 2009
Coming into operation 1 November 2009

These Regulations are made by the Governor and the Council of Ministers.

The power exercised by the Governor is section 109 of the Nationality, Immigration and Asylum Act 2002 (of Parliament)¹ as it has effect in the Isle of Man².

The power exercised by the Council of Ministers is section 2B of the European Community (Isle of Man) Act 1973 (of Tynwald)³.

PART 1

INTERPRETATION

- 1 Title**
The title of these Regulations is the Immigration (European Economic Area) Regulations 2009.
- 2 Commencement**
These Regulations come into operation on 1 November 2009.

¹ 2002 c.41

² See the Immigration (Isle of Man) Order 2008 (SI 2008/680). References in these Regulations to a provision of an Act extended to the Isle of Man by SI 2008/680 are to those Acts as they have effect in the Isle of Man by virtue of that SI. For the full history of the relevant amendments made in the United Kingdom prior to the legislation being extended to the Isle of Man see Schedules 3 to 9 of SI 2008/680.

³ 1973 c.14. Section 2B (previously s 2A, renumbered by section 1 of the European Communities (Amendment) Act 1991 (of Tynwald)) was inserted by section 3 of the European Communities (Amendment) Act 1988 (of Tynwald).

3 General interpretation

(1) In these Regulations —

“the 1971 Act” means the Immigration Act 1971 (of Parliament)⁴;

“the 1999 Act” means the Immigration and Asylum Act 1999 (of Parliament)⁵;

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002 (of Parliament);

“civil partnership” means a civil partnership which exists by virtue of the law of the United Kingdom or of an EEA State but does not include a civil partnership of convenience (and any reference to a civil partner is to be read accordingly);

“decision maker” means the Governor, the Council of Ministers, an immigration officer or an entry clearance officer (as the case may be);

“deportation order” means an order made pursuant to regulation 23(3);

“document certifying permanent residence” means a document issued to an EEA national, in accordance with regulation 17, as proof of the holder's permanent right of residence under regulation 16 as at the date of issue;

“EEA decision” means a decision under these Regulations that concerns a person's—

- (a) entitlement to be admitted to the Isle of Man;
- (b) entitlement to be issued with or have renewed, or not to have revoked, an EEA family permit; or
- (c) removal from the Isle of Man;

“EEA family permit” means a document issued to a person, in accordance with regulation 13, in connection with his or her admission to the Isle of Man;

“EEA national” means a national of an EEA State;

“EEA State” means—

- (a) a member State, other than the United Kingdom;
- (b) Norway, Iceland or Liechtenstein; or
- (c) Switzerland;

“entry clearance” has the meaning given in section 33(1) of the 1971 Act;

⁴ 1971 c. 77.

⁵ 1999 c. 33.

“entry clearance officer” means a person responsible for the grant or refusal of entry clearance;

“exclusion order” means an order made under regulation 18(3);

“immigration rules” has the meaning given in section 33(1) of the 1971 Act;

“military service” means service in the armed forces of an EEA State;

“relevant EEA national” in relation to an extended family member has the meaning given in regulation 9(6);

“spouse” does not include a party to a marriage of convenience;

“United Kingdom national” means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties.

(2) In these Regulations, any reference to an Act of Parliament, or a provision of an Act of Parliament, which extends to the Isle of Man is to that Act or provision as it has effect in the Isle of Man.

(3) Section 11 of the 1971 Act (construction of references to entry) shall apply for the purpose of determining whether a person has entered the Isle of Man for the purpose of these Regulations as it applies for the purpose of determining whether a person has entered the Isle of Man for the purpose of that Act.

4 Continuity of residence

(1) This regulation applies for the purpose of calculating periods of continuous residence in the Isle of Man under regulation 6(1) and regulation 16.

(2) Continuity of residence is not affected by —

(a) periods of absence from the Isle of Man which do not exceed 6 months in total in any year;

(b) periods of absence from the Isle of Man on military service; or

(c) any one absence from the Isle of Man not exceeding 12 months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

(3) But continuity of residence is broken if a person is removed from the Isle of Man under these Regulations.

5 “Worker”, “self-employed person”, “self-sufficient person” and “student”

(1) In these Regulations —

- (a) “worker” means a worker within the meaning of Article 39 of the Treaty establishing the European Community⁶ ;
- (b) “self-employed person” means a person who establishes himself in order to pursue activity as a self-employed person in accordance with Article 43 of the Treaty establishing the European Community;
- (c) “self-sufficient person” means a person who has—
 - (i) sufficient resources not to become a burden on the social assistance system of the Isle of Man during his or her period of residence; and
 - (ii) comprehensive sickness insurance cover in the Isle of Man;
- (d) “student” means a person who—
 - (i) is enrolled at an educational establishment for the principal purpose of following a course of study, including vocational training;
 - (ii) has comprehensive sickness insurance cover in the Isle of Man; and
 - (iii) assures the Governor, by means of a declaration, or by such equivalent means as the person may choose, that he or she has sufficient resources not to become a burden on the social assistance system of the Isle of Man during his or her period of residence.

(2) For the purposes of paragraph (1)(c), where family members of the person concerned reside in the Isle of Man and their right to reside is dependent upon their being family members of that person—

- (a) the requirement for that person to have sufficient resources not to become a burden on the social assistance system of the Isle of Man during his or her period of residence shall only be satisfied if his or her resources and those of the family members are sufficient to avoid him or her and the family members becoming such a burden;

⁶ OJ No. C325, 24.12.02, p. 51.

- (b) the requirement for that person to have comprehensive sickness insurance cover in the Isle of Man shall only be satisfied if that person and his or her family members have such cover.
- (3) For the purposes of paragraph (1)(d), where family members of the person concerned reside in the Isle of Man and their right to reside is dependent upon their being family members of that person, the requirement for that person to assure the Governor that he or she has sufficient resources not to become a burden on the social assistance system of the Isle of Man during his or her period of residence shall only be satisfied if he or she assures the Governor that his or her resources and those of the family members are sufficient to avoid him or her and the family members becoming such a burden.
- (4) For the purposes of paragraphs (1)(c) and (d) and paragraphs (2) and (3), the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if they exceed the maximum level of resources which a United Kingdom national and his or her family members may possess if he or she is to become eligible for social assistance under the Isle of Man's benefit system.

6 "Worker or self-employed person who has ceased activity"

- (1) In these Regulations, "worker or self-employed person who has ceased activity" means an EEA national who satisfies the conditions in paragraph (2), (3), (4) or (5).
- (2) A person satisfies the conditions in this paragraph if he or she —
 - (a) terminates his or her activity as a worker or self-employed person and—
 - (i) has reached the age at which he or she is entitled to a state pension on the date on which he or she terminates his or her activity; or
 - (ii) in the case of a worker, ceases working to take early retirement;
 - (b) pursued his or her activity as a worker or self-employed person in the Isle of Man for at least 12 months prior to the termination; and
 - (c) resided in the Isle of Man continuously for more than 3 years prior to the termination.

- (3) A person satisfies the conditions in this paragraph if—
- (a) that person terminates his or her activity in the Isle of Man as a worker or self-employed person as a result of a permanent incapacity to work; and
 - (b) either—
 - (i) that person resided in the Isle of Man continuously for more than 2 years prior to the termination; or
 - (ii) the incapacity is the result of an accident at work or an occupational disease that entitles him or her to a pension payable in full or in part by an institution in the Isle of Man.
- (4) A person satisfies the conditions in this paragraph if—
- (a) he or she is active as a worker or self-employed person in an EEA State but retains his or her place of residence in the Isle of Man, to which he or she returns as a rule at least once a week; and
 - (b) prior to becoming so active in that EEA State, he or she had been continuously resident and continuously active as a worker or self-employed person in the Isle of Man for at least 3 years.
- (5) A person who satisfies the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) shall, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the Isle of Man during any period in which he or she is working or self-employed in the EEA State.
- (6) The conditions in paragraphs (2) and (3) as to length of residence and activity as a worker or self-employed person shall not apply in relation to a person whose spouse or civil partner is a United Kingdom national.
- (7) For the purposes of this regulation—
- (a) periods of inactivity for reasons not of the person's own making;
 - (b) periods of inactivity due to illness or accident; and

- (c) in the case of a worker, periods of involuntary unemployment duly recorded by the Department of Trade and Industry, shall be treated as periods of activity as a worker or self-employed person, as the case may be.

7 **“Qualified person”**

- (1) In these Regulations, “qualified person” means a person who is an EEA national and in the Isle of Man as—
 - (a) a jobseeker;
 - (b) a worker;
 - (c) a self-employed person;
 - (d) a self-sufficient person; or
 - (e) a student.

- (2) A person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—
 - (a) he or she is temporarily unable to work as the result of an illness or accident;
 - (b) he or she is in duly recorded involuntary unemployment after having been employed in the Isle of Man, provided that he or she has registered as a jobseeker with the Department of Trade and Industry and—
 - (i) he or she was employed for one year or more before becoming unemployed;
 - (ii) he or she has been unemployed for no more than 6 months; or
 - (iii) he or she can provide evidence that he or she is seeking employment in the Isle of Man and has a genuine chance of being engaged;
 - (c) he or she is involuntarily unemployed and has embarked on vocational training; or
 - (d) he or she has voluntarily ceased working and embarked on vocational training that is related to his or her previous employment.

- (3) A person who is no longer in self-employment shall not cease to be treated as a self-employed person for the purpose of paragraph (1)(c) if he or she is temporarily unable to pursue his or her activity as a self-employed person as the result of an illness or accident.
- (4) For the purpose of paragraph (1)(a), “jobseeker” means a person who enters the Isle of Man in order to seek employment and can provide evidence that he or she is seeking employment and has a genuine chance of being engaged.

8 **Family member**

- (1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person—
 - (a) his or her spouse or civil partner;
 - (b) direct descendants of that person, or of his or her spouse or civil partner who are—
 - (i) under 21; or
 - (ii) dependants of that person, or of his or her spouse or civil partner;
 - (c) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;
 - (d) a person who is to be treated as the family member of that other person under paragraph (3).
- (2) A person shall not be treated under paragraph (1)(b) or (c) as the family member of a student residing in the Isle of Man after the period of 3 months beginning on the date on which the student is admitted to the Isle of Man unless—
 - (a) in the case of paragraph (b), the person is the dependent child of the student or of his or her spouse or civil partner; or
 - (b) the student also falls within one of the other categories of qualified persons mentioned in regulation 7(1).
- (3) Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit shall be treated as the family member of the relevant EEA national for as long as he or she continues to satisfy the conditions in regulation 9(2), (3),

(4) or (5) in relation to that EEA national and the permit has not ceased to be valid or been revoked.

- (4) Where the relevant EEA national is a student, the extended family member shall only be treated as the family member of that national under paragraph (3) if the EEA family permit was issued under regulation 13(2).

9 “Extended family member”

- (1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 8(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).
- (2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, or of his or her spouse or civil partner and—
- (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of that EEA national’s household;
 - (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the Isle of Man or wishes to join him or her there; or
 - (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the Isle of Man and continues to be dependent upon that EEA national or to be a member of his or her household.
- (3) A person satisfies the condition in this paragraph if the person is a relative of an EEA national or his or her spouse or civil partner and, on serious health grounds, strictly requires the personal care of the EEA national or the spouse or civil partner of that EEA national.
- (4) A person satisfies the condition in this paragraph if the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the Isle of Man as a dependent relative of the EEA national were the EEA national a person present and settled in the Isle of Man.

- (5) A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he or she is in a durable relationship with the EEA national.
- (6) In these Regulations “relevant EEA national” means, in relation to an extended family member, the EEA national who is or whose spouse or civil partner is the relative of the extended family member for the purpose of paragraph (2), (3) or (4) or the EEA national who is the partner of the extended family member for the purpose of paragraph (5).

10 Family members of United Kingdom nationals

- (1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member of a United Kingdom national as if the United Kingdom national were an EEA national.
- (2) The conditions are that—
 - (a) the United Kingdom national is residing in an EEA State as a worker or self-employed person or was so residing before returning to the Isle of Man; and
 - (b) if the family member of the United Kingdom national is his or her spouse or civil partner, the parties are living together in the EEA State or had entered into the marriage or civil partnership and were living together in that State before the United Kingdom national returned to the Isle of Man.
- (3) Where these Regulations apply to the family member of a United Kingdom national the United Kingdom national shall be treated as holding a valid passport issued by an EEA State for the purpose of the application of regulation 14 to that family member.

11 “Family member who has retained the right of residence”

- (1) In these Regulations, “family member who has retained the right of residence” means, subject to paragraph (8), a person who satisfies the conditions in paragraph (2), (3), (4) or (5).
- (2) A person satisfies the conditions in this paragraph if—
 - (a) he or she was a family member of a qualified person when the qualified person died;

- (b) he or she resided in the Isle of Man in accordance with these Regulations for at least the year immediately before the death of the qualified person; and
 - (c) he or she satisfies the condition in paragraph (6).
- (3) A person satisfies the conditions in this paragraph if—
- (a) he or she is the direct descendant of—
 - (i) a qualified person who has died;
 - (ii) a person who ceased to be a qualified person on ceasing to reside in the Isle of Man; or
 - (iii) the person who was the spouse or civil partner of the qualified person mentioned in sub-paragraph (i) when he or she died or is the spouse or civil partner of the person mentioned in sub-paragraph (ii); and
 - (b) he or she was attending an educational course in the Isle of Man immediately before the qualified person died or ceased to be a qualified person and continues to attend such a course.
- (4) A person satisfies the conditions in this paragraph if the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).
- (5) A person satisfies the conditions in this paragraph if—
- (a) he or she ceased to be a family member of a qualified person on the termination of the marriage or civil partnership of the qualified person;
 - (b) he or she was residing in the Isle of Man in accordance with these Regulations at the date of the termination;
 - (c) he or she satisfies the condition in paragraph (6); and
 - (d) either—
 - (i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership the marriage or civil partnership had lasted for at least 3 years and the parties to the marriage or civil partnership had resided in the Isle of Man for at least one year during its duration;

- (ii) the former spouse or civil partner of the qualified person has custody of a child of the qualified person;
 - (iii) the former spouse or civil partner of the qualified person has the right of access to a child of the qualified person under the age of 18 and a court has ordered that such access must take place in the Isle of Man; or
 - (iv) the continued right of residence in the Isle of Man of the person is warranted by particularly difficult circumstances, such as the person or another family member having been a victim of domestic violence while the marriage or civil partnership was subsisting.
- (6) The condition in this paragraph is that the person—
- (a) is not an EEA national but would, if he or she were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 7; or
 - (b) is the family member of a person who falls within paragraph (a).
- (7) In this regulation, “educational course” means a course that would fall within Article 12 of Council Regulation (EEC) No. 1612/68 on freedom of movement for workers⁷ were the Isle of Man a Member State of the European Community.
- (8) A person with a permanent right of residence under regulation 16 shall not become a family member who has retained the right of residence on the death or departure from the Isle of Man of the qualified person or the termination of the marriage or civil partnership, as the case may be, and a family member who has retained the right of residence shall cease to have that status on acquiring a permanent right of residence under regulation 16.

⁷ OJ No. L 257, 19.10.68, p. 2 (OJ/SE 1st series 1968, vol II, p. 475).

PART 2

EEA RIGHTS

12 Right of admission to the Isle of Man

- (1) An EEA national must be admitted to the Isle of Man if he or she produces on arrival a valid national identity card or passport issued by an EEA State.
- (2) A person who is not an EEA national must be admitted to the Isle of Man if he or she is a family member of an EEA national, a family member who has retained the right of residence or a person with a permanent right of residence under regulation 16 and produces on arrival—
 - (a) a valid passport; and
 - (b) an EEA family permit.
- (3) Before an immigration officer refuses admission to the Isle of Man to a person under this regulation because the person does not produce on arrival a document mentioned in paragraph (1) or (2), the immigration officer must give the person every reasonable opportunity to obtain the document or have it brought to him or her within a reasonable period of time or to prove by other means that he or she is—
 - (a) an EEA national;
 - (b) a family member of an EEA national with a right to accompany that national or join him or her in the Isle of Man; or
 - (c) a family member who has retained the right of residence or a person with a permanent right of residence under regulation 16.
- (4) But this regulation is subject to regulations 18(1) and (4).

13 Issue of EEA family permit

- (1) An entry clearance officer must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and—
 - (a) the EEA national—

- (i) is residing in the Isle of Man in accordance with these Regulations; or
 - (ii) will be travelling to the Isle of Man within 6 months of the date of the application and will be an EEA national residing in the Isle of Man in accordance with these Regulations on arrival in the Isle of Man; and
 - (b) the family member will be accompanying the EEA national to the Isle of Man or joining the EEA national there and—
 - (i) is lawfully resident in an EEA State; or
 - (ii) would meet the requirements in the immigration rules (other than those relating to entry clearance) for leave to enter the Isle of Man as the family member of the EEA national or, in the case of direct descendants or dependent direct relatives in the ascending line of his or her spouse or his or her civil partner, as the family member of his or her spouse or his or her civil partner, were the EEA national or the spouse or civil partner a person present and settled in the Isle of Man.
- (2) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national who applies for one if—
- (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
 - (b) the extended family member wishes to accompany the relevant EEA national to the Isle of Man or to join the EEA national there; and
 - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.
- (3) Where an entry clearance officer receives an application under paragraph (2) he or she shall undertake an extensive examination of the personal circumstances of the applicant and if he or she refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.
- (4) An EEA family permit issued under this regulation shall be issued free of charge and as soon as possible.

- (5) But an EEA family permit shall not be issued under this regulation if the applicant or the EEA national concerned is subject to a deportation or exclusion order or falls to be excluded from the Isle of Man on grounds of public policy, public security or public health in accordance with regulation 20.

14 Initial right of residence

- (1) An EEA national is entitled to reside in the Isle of Man for a period not exceeding 3 months beginning on the date on which he or she is admitted to the Isle of Man provided that he or she holds a valid national identity card or passport issued by an EEA State.
- (2) A family member of an EEA national residing in the Isle of Man under paragraph (1) who is not an EEA national is entitled to reside in the Isle of Man provided that he or she holds a valid passport.
- (3) But—
 - (a) this regulation is subject to regulation 18(5)(b); and
 - (b) an EEA national or his or her family member who becomes an unreasonable burden on the social assistance system of the Isle of Man shall cease to have the right to reside under this regulation.

15 Extended right of residence

- (1) A qualified person is entitled to reside in the Isle of Man for so long as he or she remains a qualified person.
- (2) A family member of a qualified person residing in the Isle of Man under paragraph (1) or of an EEA national with a permanent right of residence under regulation 16 is entitled to reside in the Isle of Man for so long as he or she remains the family member of the qualified person or EEA national.
- (3) A family member who has retained the right of residence is entitled to reside in the Isle of Man for so long as he or she remains a family member who has retained the right of residence.
- (4) A right to reside under this regulation is in addition to any right a person may have to reside in the Isle of Man under regulation 14 or 16.
- (5) But this regulation is subject to regulation 18(5)(b).

16 Permanent right of residence

- (1) The following persons shall acquire the right to reside in the Isle of Man permanently—
 - (a) an EEA national who has resided in the Isle of Man in accordance with these Regulations for a continuous period of 5 years;
 - (b) a family member of an EEA national who is not an EEA national but who has resided in the Isle of Man with the EEA national in accordance with these Regulations for a continuous period of 5 years;
 - (c) a worker or self-employed person who has ceased activity;
 - (d) the family member of a worker or self-employed person who has ceased activity;
 - (e) a person who was the family member of a worker or self-employed person where—
 - (i) the worker or self-employed person has died;
 - (ii) the family member resided with him or her immediately before his or her death; and
 - (iii) the worker or self-employed person had resided continuously in the Isle of Man for at least the 2 years immediately before his or her death or the death was the result of an accident at work or an occupational disease;
 - (f) a person who—
 - (i) has resided in the Isle of Man in accordance with these Regulations for a continuous period of 5 years; and
 - (ii) was, at the end of that period, a family member who has retained the right of residence.
- (2) Once acquired, the right of permanent residence under this regulation shall be lost only through absence from the Isle of Man for a period exceeding 2 consecutive years.
- (3) But this regulation is subject to regulation 18(5)(b).

PART 3

RESIDENCE DOCUMENTATION

17 Issue of a document certifying permanent residence

- (1) The Governor must issue an EEA national with a permanent right of residence under regulation 16 with a document certifying permanent residence as soon as possible after an application for such a document and proof that the EEA national has such a right is submitted to the Governor.
- (2) The Governor must issue a person who is not an EEA national who has a permanent right of residence under regulation 16 with a document certifying permanent residence no later than 6 months after the date on which an application for such a document and proof that the person has such a right is submitted to the Governor.
- (3) A document certifying permanent residence shall be issued free of charge.
- (4) A document certifying permanent residence shall cease to be valid if the person to whom it was issued ceases to have a right of permanent residence under regulation 16.
- (5) But this regulation is subject to regulation 19.

PART 4

REFUSAL OF ADMISSION AND REMOVAL ETC

18 Exclusion and removal from the Isle of Man

- (1) A person is not entitled to be admitted to the Isle of Man by virtue of regulation 12 if his or her exclusion is justified on grounds of public policy, public security or public health in accordance with regulation 20.
- (2) A person is not entitled to be admitted to the Isle of Man by virtue of regulation 12 if that person is subject to a deportation order or exclusion order.
- (3) If the Governor 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 20 the Governor may make an order for the purpose of these Regulations prohibiting that person from entering the Isle of Man.

- (4) A person is not entitled to be admitted to the Isle of Man as the family member of an EEA national under regulation 12(2) unless, at the time of his or her arrival—
 - (a) he or she is accompanying the EEA national or joining him or her in the Isle of Man; and
 - (b) the EEA national has a right to reside in the Isle of Man under these Regulations.
- (5) Subject to paragraphs (6) and (7), an EEA national who has entered the Isle of Man or the family member of such a national who has entered the Isle of Man may be removed if –
 - (a) that person does not have or ceases to have a right to reside under these Regulations; or
 - (b) the Governor has decided that the person’s removal is justified on grounds of public policy, public security or public health in accordance with regulation 20.
- (6) A person must not be removed under paragraph (5) as the automatic consequence of having recourse to the social assistance system of the Isle of Man.
- (7) A person must not be removed under paragraph (5) if he or she has a right to remain in the Isle of Man by virtue of leave granted under the 1971 Act unless his or her removal is justified on the grounds of public policy, public security or public health in accordance with regulation 20.

19 Refusal to issue and revocation of residence documentation

- (1) The Governor may refuse to issue or revoke a document certifying permanent residence if the refusal or revocation is justified on grounds of public policy, public security or public health.
- (2) The removal of a person from the Isle of Man under these Regulations invalidates a document certifying permanent residence held by that person or an application made by that person for such a document.

- (3) The Governor may revoke a document certifying permanent residence if the holder of the document has ceased to have a right of permanent residence under regulation 16.
- (4) An entry clearance officer or immigration officer may at any time revoke a person's EEA family permit 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 Isle of Man under these Regulations or is not accompanying that national or joining him or her in the Isle of Man.
- (5) Any action taken under this regulation on grounds of public policy, public security or public health shall be in accordance with regulation 20.

20 Decisions taken on public policy, public security and public health grounds

- (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 permanent right of residence under regulation 16 except on serious grounds of public policy or public security.
- (4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—
 - (a) has resided in the Isle of Man for a continuous period of at least 10 years prior to the relevant decision; or
 - (b) is under the age of 18, unless the relevant decision is necessary in his or her best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989⁸.

⁸ Cmd 1976.

- (5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, 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 concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
 - (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.
- (6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the Isle of Man the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in the Isle of Man, the person's social and cultural integration into the Isle of Man and the extent of the person's links with his 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 Organisation⁹ or is not a notifiable disease to which section 47 of the Public Health Act 1990 (of Tynwald)¹⁰ applies (power to order detention in hospitals) shall not constitute grounds for the decision; and
 - (b) if the person concerned is in the Isle of Man, diseases occurring after the 3 month period beginning on the date on which he or she arrived in the Isle of Man shall not constitute grounds for the decision.

⁹ The relevant instrument of the World Health Organisation for these purposes is currently the International Health Regulations (2005)

¹⁰ 1990 c.10

PART 5

PROCEDURE IN RELATION TO EEA DECISIONS

21 Person claiming right of admission

- (1) This regulation applies to a person who claims a right of admission to the Isle of Man under regulation 12 as—
 - (a) a person, not being an EEA national, who is a family member of an EEA national, a family member who has retained the right of residence or a person with a permanent right of residence under regulation 16; or
 - (b) an EEA national, where there is reason to believe that he or she may fall to be excluded under regulation 18(1) or (2).
- (2) A person to whom this regulation applies is to be treated as if he or she were a person seeking leave to enter the Isle of Man under the 1971 Act for the purposes of paragraphs 2, 3, 4, 7, 16 to 18 and 21 to 24 of Schedule 2 to the 1971 Act (administrative provisions as to control on entry etc), except that—
 - (a) the reference in paragraph 2(1) to the purpose for which the immigration officer may examine any persons who have arrived in the Isle of Man is to be read as a reference to the purpose of determining whether he or she is a person who is to be granted admission under these Regulations;
 - (b) the references in paragraphs 7 and 16(1) to a person who is, or may be, given leave to enter are to be read as references to a person who is, or may be, granted admission under these Regulations; and
 - (c) a medical examination is not be carried out under paragraph 2 or paragraph 7 as a matter of routine and may only be carried out within 3 months of a person's arrival in the Isle of Man.
- (3) For so long as a person to whom this regulation applies is detained, or temporarily admitted or released while liable to detention, under the powers conferred by Schedule 2 to the 1971 Act, he or she is deemed not to have been admitted to the Isle of Man.

22 Person refused admission

- (1) This regulation applies to a person who is in the Isle of Man and has been refused admission to the Isle of Man—
 - (a) because he or she does not meet the requirement of regulation 12 (including where he or she does not meet those requirements because his or her EEA family permit has been revoked by an immigration officer in accordance with regulation 19); or
 - (b) in accordance with regulation 18(1), (2) or (4).
- (2) A person to whom this regulation applies, is to be treated as if he or she were a person refused leave to enter under the 1971 Act for the purpose of paragraphs 8, 10, 10A, 11, 16 to 19 and 21 to 24 of Schedule 2 to the 1971 Act, except that the reference in paragraph 19 to a certificate of entitlement, entry clearance or work permit is to be read as a reference to an EEA family permit.

23 Person subject to removal

- (1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the Isle of Man under regulation 18(5), that person may be detained under the authority of an immigration officer pending a decision whether or not to remove the person under that regulation, and paragraphs 17 and 18 of Schedule 2 to the 1971 Act 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.
- (2) Where a decision is taken to remove a person under regulation 18(5)(a), the person is to be treated as if he or she were a person to whom section 10(1)(a) of the 1999 Act applied, and section 10 of that Act (removal of certain persons unlawfully in the Isle of Man) is to apply accordingly.
- (3) Where a decision is taken to remove a person under regulation 18(5)(b), the person is to be treated as if he or she were a person to whom section 3(5)(a) of the 1971 Act (liability to deportation) applied, and section 5 of that Act (procedure for deportation) and Schedule 3 to that Act (supplementary provision as to deportation) are to apply accordingly.
- (4) A person who enters the Isle of Man 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.

- (5) Where such a deportation order is made against a person but he or she is not removed under the order during the 2 year period beginning on the date on which the order is made, the Governor shall only take action to remove the person under the order after the end of that period if, having assessed whether there has been any material change in circumstances since the deportation order was made, the Governor considers that the removal continues to be justified on the grounds of public policy, public security or public health.
- (6) A person to whom this regulation applies shall be allowed one month to leave the Isle of Man, beginning on the date on which he or she is notified of the decision to remove him or her, before being removed pursuant to that decision except—
 - (a) in duly substantiated cases of urgency;
 - (b) where the person is detained pursuant to the sentence or order of any court;
 - (c) where a person is a person to whom paragraph (4) applies.

24. Revocation of deportation and exclusion orders

- (1) A deportation or exclusion order shall remain in force unless it is revoked by the Governor under this regulation.
- (2) A person who is subject to a deportation or exclusion order may apply to the Governor 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 Isle of Man.
- (4) On receipt of an application under paragraph (2), the Governor shall revoke the order if the Governor considers that the order can no longer be justified on grounds of public policy, public security or public health in accordance with regulation 20.

- (5) The Governor shall take a decision on an application under paragraph (2) no later than 6 months after the date on which the application is received.

PART 6

APPEALS UNDER THESE REGULATIONS

25 Interpretation of Part 6

- (1) In this Part –

“adjudicator” means an adjudicator for the purposes of Part 5 of the 2002 Act;

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 2001 (of Tynwald)¹¹; and

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951¹² and the Protocol relating to the Status of Refugees done at New York on 31st January 1967¹³.

- (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 Isle of Man.

26 Appeal rights

- (1) Subject to the following paragraphs of this regulation, a person may appeal under these Regulations against an EEA decision.

¹¹ 2001 c.1

¹² Cmd 9171

¹³ Cmnd 3906

- (2) If a person claims to be an EEA national, he or she may not appeal under these Regulations unless he or she produces a valid national identity card or passport issued by an EEA State.
- (3) If a person claims to be the family member or relative of an EEA national he or she may not appeal under these Regulations unless he or she produces—
 - (a) an EEA family permit; or
 - (b) other proof that he or she is related as claimed to an EEA national.
- (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 Governor 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.
- (6) An appeal under these Regulations lies to an adjudicator.
- (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 an adjudicator in accordance with that Schedule.

27 Out of country appeals

- (1) Subject to paragraphs (2) and (3), a person may not appeal under regulation 26 whilst he or she is in the Isle of Man against an EEA decision—
 - (a) to refuse to admit him or her to the Isle of Man;
 - (b) to make an exclusion order against him or her;
 - (c) to refuse to revoke a deportation or exclusion order made against him or her;
 - (d) to refuse to issue him or her with an EEA family permit; or
 - (e) to remove him or her from the Isle of Man after he or she has entered the Isle of Man in breach of a deportation or exclusion order.

(2) Paragraphs (1)(a) and (b) do not apply where the person is in the Isle of Man and—

- (a) the person held a valid EEA family permit, or a document certifying permanent residence on his or her arrival in the Isle of Man or can otherwise prove that he or she is resident in the Isle of Man;
 - (b) the person is deemed not to have been admitted to the Isle of Man under regulation 21(3) if at the date on which notice of the decision to refuse to admit him or her is given he or she has been in the Isle of Man for at least 3 months; or
 - (c) a ground of the appeal is that, in taking the decision, the decision maker acted in breach of that person's rights under the Human Rights Convention or the Refugee Convention, unless the Governor certifies that that ground of appeal is clearly unfounded.
- (3) Paragraph (1)(e) does not apply where a ground of the appeal is that, in taking the decision, the decision maker acted in breach of the appellant's rights under the Human Rights Convention or the Refugee Convention, unless the Governor certifies that that ground of appeal is clearly unfounded.

28 Effect of appeals to an Adjudicator

- (1) This regulation applies to appeals under these Regulations made to an adjudicator.
- (2) If a person in the Isle of Man appeals against an EEA decision to refuse to admit him or her to the Isle of Man, any directions for that person's removal from the Isle of Man 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 Isle of Man appeals against an EEA decision to remove him or her from the Isle of Man, any directions given under section 10 of the 1999 Act or Schedule 3 to the 1971 Act for that person's removal from the Isle of Man 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 her or a decision to remove him or her as if there were in force directions for his or her removal from the Isle of Man, except that he or she may not be detained on board a ship or aircraft so as to compel that person to leave the Isle of Man while the appeal is pending.
- (5) In calculating the period of 2 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 Isle of Man; and
 - (b) the giving of a notice of intention to give such directions, any period during which there is pending an appeal by that person under Part 5 of the 2002 Act is to be disregarded.
- (6) If a person in the Isle of Man appeals against an EEA decision to remove him or her from the Isle of Man, a deportation order is not to be made against him or her 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.

PART 7

GENERAL

29 Effect on other legislation

Schedule 2 (effect on other legislation) shall have effect.

30 Transitional provisions and consequential amendments

Schedule 3 (transitional provisions) and Schedule 4 (consequential amendments) shall have effect.

31 Declaration of the purposes of section 2B(8) of the European Communities (Isle of Man) Act 1973

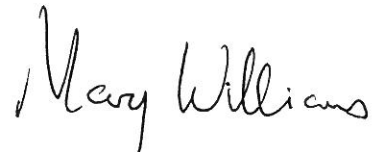
Without limiting the powers exercised by the Council of Ministers under section 2B of the European Communities (Isle of Man) Act 1973, to the extent that these Regulations are made under section 2B(1)(a) of that Act, they are made in implementation of a Community obligation created by Directive 2004/38/EC of the European Parliament and of the Council of 29 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 States¹⁴.

MADE 15 September 2009



Lieutenant Governor

MADE 15 September 2009



Chief Secretary

¹⁴ OJ L158 30.04.2004, p.77

SCHEDULE 1

Regulation 26(7)

APPEALS TO AN ADJUDICATOR

The following provisions of, or made under, the 2002 Act have effect in relation to an appeal under these Regulations to an Adjudicator as if it were an appeal against an immigration decision under section 82(1) of that Act:

section 84(1), except paragraphs (a) and (f);

sections 85 to 87;

sections 103E;

section 105 and any regulations made under that section; and

section 106 and any rules made under that section.

SCHEDULE 2

Regulation 29

EFFECT ON OTHER LEGISLATION

Leave under the 1971 Act

- 1 (1) In accordance with section 7 of the Immigration Act 1988 (of Parliament) ¹⁵, a person who is admitted to or acquires a right to reside in the Isle of Man under these Regulations shall not require leave to remain in the Isle of Man under the 1971 Act during any period in which he or she has a right to reside under these Regulations but such a person shall require leave to remain under the 1971 Act during any period in which he or she does not have such a right.
- (2) Where a person has leave to enter or remain under the 1971 Act which is subject to conditions and that person also has a right to reside under these Regulations, those conditions shall not have effect for as long as the person has that right to reside.

Persons not subject to restriction on the period for which they may remain

- 2 (1) For the purposes of the 1971 Act and the British Nationality Act 1981 (of Parliament) ¹⁶, a person who has a permanent right of residence under regulation 16 shall be regarded as a person who is in the Isle of Man without being subject under the immigration laws to any restriction on the period for which he may remain.
- (2) But a qualified person, the family member of a qualified person and a family member who has retained the right of residence shall not, by virtue of that status, be so regarded for those purposes.

Carriers' liability under the 1999 Act

- 3 For the purposes of satisfying a requirement to produce a visa under section 40(1)(b) of the 1999 Act (charges in respect of passenger without proper documents), "a visa of the required kind" includes an EEA family permit, required for admission under regulation 12(2).

Appeals under the 2002 Act and previous Immigration Acts

- 4 (1) The following EEA decisions shall not be treated as immigration decisions for the purpose of section 82(2) of the 2002 Act (right of appeal against an immigration decision)—
 - (a) a decision that a person is to be removed under regulation 18(5)(a) by way of a direction under section 10(1)(a) of the 1999 Act (as provided for by regulation 23(2));
 - (b) a decision to remove a person under regulation 18(5)(b) by making a deportation order under section 5(1) of the 1971 Act (as provided for by regulation 23(3));

¹⁵ 1988 c.14.

¹⁶ 1981 c. 61.

- (c) a decision to remove a person mentioned in regulation 23(4) by way of directions under paragraphs 8 to 10 of Schedule 2 to the 1971 Act.
- (2) A person who has been issued with a document certifying permanent residence under these Regulations shall have no right of appeal under section 82(1) of the 2002 Act. Any existing appeal under that section shall be treated as abandoned.
- (3) In addition to the national of a State which is a contracting party to the Agreement referred to in section 84(2) of the 2002 Act, a Swiss national shall also be treated as an EEA national for the purposes of section 84(1)(d) of that Act.
- (4) An appeal under these Regulations against an EEA decision shall be treated as an appeal under section 82(1) of the 2002 Act against an immigration decision for the purposes of section 96(1)(a) of the 2002 Act.
- (5) Section 120 of the 2002 Act shall apply to a person if an EEA decision has been taken or may be taken in respect of him and, accordingly, the Governor or an immigration officer may by notice require a statement from that person under subsection (2) of that section and that notice shall have effect for the purpose of section 96(2) of the 2002 Act.

SCHEDULE 3

Regulation 30

TRANSITIONAL PROVISIONS

Existing documents

- 1 An EEA family permit previously issued under paragraph 260 of the immigration rules shall, after 30 October 2009, be treated as if it were an EEA family permit issued under these Regulations.

Outstanding applications

- 2 An application for an EEA family permit made but not determined under the immigration rules before 1 November 2009 shall be treated as an application under these Regulations for an EEA family permit.

Decisions to remove under the Immigration Rules

- 3 A deportation order made under section 5 of the 1971 Act in respect of an EEA national or the member of the family of an EEA national shall, after 1 November 2009, be treated as a deportation made under section 5 of the 1971 Act by virtue of regulation 23(3) of these Regulations.

Periods of residence prior to the coming into operation of these Regulations

- 4 Any period during which an EEA national was resident in the Isle of Man or carried out an activity in the Isle of Man in accordance with paragraph 257 of the immigration rules, shall be treated as a period during which the person carried out that activity or was resident in the Isle of Man in accordance with these Regulations for the purpose of calculating periods of activity and residence under these Regulations.

SCHEDULE 4

Regulation 30

CONSEQUENTIAL AMENDMENTS

The Immigration (Notices) Regulations 2008

- 1 (1) The Immigration (Notices) Regulations 2008¹⁷ are amended as follows.
- (2) In regulation 2, after the definition of "decision maker" insert—
"EEA Decision" means a decision under the Immigration (European Economic Area) Regulations 2009 that concerns a person's
 - (a) entitlement to be admitted to the Isle of Man;
 - (b) entitlement to be issued with or have renewed, or not to have revoked, a document certifying permanent residence; or
 - (c) removal from the Isle of Man;"
- (3) In regulation 3(1), after "immigration decision" insert "or EEA decision".
- (4) In regulation 4(6), after "immigration decision" insert "or the EEA decision".

The Immigration (Restrictions on Employment) Order 2008

- 2 (1) The Immigration (Restrictions on Employment) Order 2008¹⁸ is amended as follows.
- (2) In Part 1 of the Schedule (descriptions of documents for the purposes of article 4(2)(a) of the Order), for paragraph 4 substitute—
"4. A document certifying permanent residence within the meaning of regulation 3 of the Immigration (European Economic Area) Regulations 2009, including a document which is treated as a document certifying permanent residence by virtue of Schedule 3 to those Regulations."

The Immigration Appeals (Procedure) Rules 2008

- 3 (1) The Immigration Appeals (Procedure) Rules 2008¹⁹ are amended as follows.
- (2) In regulation 18(1), after "the 2002 Act" insert "or, on or after 1 November 2009 paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2009 (the 2009 Regulations)".
- (3) In regulation 18(9), after "section 104(4) of the 2002 Act" insert "or paragraph 4(2) of Schedule 2 to the 2009 Regulations".

¹⁷ SD 181/08

¹⁸ SD 186/08

¹⁹ SD 184/08

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2004/38/EC of the European Parliament and the Council of 29th 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 Directive amends Regulation (EEC) No 1612/68 and repeals Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. The Regulations come into force on 1 November 2009.

Directive 2004/38/EC provides for the free movement of citizens of the European Union and their family members within the territory of the member States. These Regulations also apply to nationals from Norway, Iceland, Liechtenstein and Switzerland and their family members as well as to European Union citizens and their family members. This will avoid having to apply a slightly different free movement regime to nationals from Norway, Iceland, Liechtenstein and Switzerland and their family members from that which has to apply to Union citizens and their family members under Directive 2004/38/EC.

Directive 2004/38/EC is based on the provisions of the repealed Directives but it also contains new provisions, some of which reflect the case law of the European Court of Justice relating to the repealed Directives and the free movement of persons and some of which represent developments of the law on the free movement of persons. The main developments, which are reflected in these Regulations, are:

- (a) the inclusion of civil partners as family members of EU nationals along with spouses so far as member States who treat such partnerships as equivalent to marriage are concerned;
- (b) the introduction of an initial right of residence of 3 months in a host member State for EU nationals and their family members provided they do not become an unreasonable burden on the social assistance system of the host member State – this right of residence is not conditional on the EU national being, for example, a worker, self-employed, as was the case under the repealed Directives;
- (c) the introduction of a permanent right of residence in a host member State, which generally applies after 5 years residence in that member State.

Part 1 (regulations 1 to 11) of the Regulations contains the interpretation provisions for the Regulations.

Part 2 (regulations 12 to 16) sets out the free movement rights conferred on EEA nationals—

- (i) the right of EEA nationals and their family members to be admitted to the Isle of Man provided they have the relevant documents (regulation 12);
- (ii) the right of EEA nationals and their family members to reside in the Isle of Man for an initial period of 3 months (regulation 14);
- (iii) the right of a "qualified person" (a jobseeker, worker, self-employed person, self-sufficient person or student), a family member a qualified person, and a "family member who has retained the right of residence" (for example, a family member of a deceased qualified person who satisfies specified conditions) to reside in the Isle of Man for as long as they have this status (regulation 15); and
- (iv) the right of EEA nationals and their family members to permanent residence in the Isle of Man in specified circumstances (for example, after they have resided in the Isle of Man under the Regulations for 5 years (regulation 16)).

Part 3 (Regulation 17) provides for the issue of a document certifying permanent residence by the Governor, which can be used as proof of the rights of residence provided for in the Regulations.

Part 4 (regulations 18 to 20) provides for the exclusion and removal of EEA nationals and their family members in prescribed circumstances including on public policy, public security and public health grounds.

Part 5 (regulations 21 to 24) contains procedural provisions relating to persons who claim admission under the Regulations, who are refused admission, or are being removed. It also provides for the revocation of deportation and exclusion orders.

Part 6 (regulations 25 to 28 and Schedule 1) sets out the appeal rights in relation to decisions taken under the Regulations.

Part 7 (regulations 29 and 30) contain general provisions.

Schedule 2 deals with the effect on other legislation. Schedule 3 contains transitional provisions and Schedule 4 contains consequential amendments.