



Home Office

Regulation 24AA certification guidance for European Economic Area deportation cases

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Section 1: Introduction

Purpose

- 1.1 This guidance explains how case owners consider certifying a human rights claim, made by an EEA national in the context of deportation, under regulation 24AA of the Immigration (European Economic Area) Regulations 2006. This guidance applies to any EEA national or non-EEA national with enforceable EU law rights who falls to be deported under regulation 19(3)(b) of the EEA Regulations.

Legislation

- 1.2 Regulation 24AA of the EEA Regulations came into force on 28 July 2014. It reads:

Human rights considerations and interim orders to suspend removal

24AA. (1) This regulation applies where the Secretary of State intends to give directions for the removal of a person (“P”) to whom regulation 24(3) applies, in circumstances where—

(a) P has not appealed against the EEA decision to which regulation 24(3) applies, but would be entitled, and remains within time, to do so from within the United Kingdom (ignoring any possibility of an appeal out of time with permission); or

(b) P has so appealed but the appeal has not been finally determined.

(2) The Secretary of State may only give directions for P’s removal if the Secretary of State certifies that, despite the appeals process not having been begun or not having been finally determined, removal of P to the country or territory to which P is proposed to be removed, pending the outcome of P’s appeal, would not be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

(3) The grounds upon which the Secretary of State may certify a removal under paragraph (2) include (in particular) that P would not, before the appeal is finally determined, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed.

(4) If P applies to the appropriate court or tribunal (whether by means of judicial review or otherwise) for an interim order to suspend enforcement of the removal decision, P may not be removed from the United Kingdom until such time as the decision on the interim order has been taken, except—

(a) where the expulsion decision is based on a previous judicial decision;

(b) where P has had previous access to judicial review; or

(a) where the removal decision is based on imperative grounds of public security.

(5) In this regulation, “finally determined” has the same meaning as in Part 6.”.

Background

- 1.3 The Immigration (European Economic Area) (Amendment) (No.2) Regulations 2014 amended the Immigration (European Economic Area) Regulations 2006 so that an appeal against a deportation decision under regulation 19(3)(b) of the EEA Regulations no longer suspends removal proceedings, except where:
- the Secretary of State has not certified that the person would not face a real risk of serious irreversible harm if removed to the country of return before the appeal is finally determined.
 - the person has made an application to the courts for an interim order to suspend removal proceedings (e.g. judicial review) and that application has not yet been determined, or a court has made an interim order to suspend removal.
- 1.4 The application of a regulation 24AA certificate does not prevent a person from lodging an appeal from within the UK, rather, by amending regulation 29 of the EEA Regulations, it removes the suspensive effect of that appeal. So, whilst a person may lodge their appeal in-country, the lodging of such an appeal does not suspend their removal from the UK. The new Regulations also do not impact on the period allowed for voluntary departure, and a person liable to deportation pursuant to the EEA Regulations still has 30 days in which to leave the UK voluntarily before their removal is enforced, save in duly urgent cases.
- 1.5 Therefore, regulation 24AA applies to:
- a person who appeals in time against an EEA deportation decision, where that appeal has not been finally determined;
 - a person who has not appealed against an EEA deportation decision but would be entitled to do so from within the UK (this does not include out of time appeals).
- 1.6 The amended EEA Regulations also allow a person who was deported under regulation 19(3)(b) before their appeal is finally determined, to apply from out of country for permission to re-enter the UK solely in order to make submissions in person at their appeal hearing.

Initial Cohort

- 1.6 Regulations 24AA and 29AA came into force on 28 July 2014. They were initially rolled out to a limited cohort of cases where:
- the person was aged 18 or over at the time of the deportation decision; and
 - the person did not have a genuine and subsisting parental relationship with a dependent child or children.
- 1.7 That first phase came to an end on 17 October 2014.

Section 55 duty

- 1.8 The duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children who are in the UK means that a child's best interests are a primary consideration in deportation cases.
- 1.9 Case owners must carefully consider all of the information and evidence provided concerning the best interests of a child in the UK, in relation to the application of the regulations 24AA and 29AA of the EEA Regulations. Case owners must carefully assess the quality of any evidence provided. Original, documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests.
- 1.10 For further guidance in relation to the section 55 duty, see:
- [Section 55 children's duty guidance](#);
 - [Introduction to children and family cases](#); and
 - [Criminality guidance for Article 8 ECHR cases](#).

Section 2: Cases not suitable for regulation 24AA certification

- 2.1 Where the following certificates can be applied in relation to all grounds which may be brought in an appeal, there will be no need to apply a regulation 24AA certificate:
- regulation 26(5) of the EEA Regulations, which states, “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”;
 - paragraph 4(5) of Schedule 2 (regulation 30) to the EEA Regulations, which requires the Secretary of State to certify a protection claim from an EEA national unless the claim is not clearly unfounded.
- 2.2 Decisions to deport pursuant to the EEA Regulations where the person is serving a determinate-length sentence where release is at the discretion of the Parole Board will not normally be suitable for regulation 24AA certification. This includes those who were:
- sentenced in accordance with the Discretionary Conditional Release Scheme (DCR) under the Criminal Justice Act 1991;
 - given an Extended Sentence for Public Protection (EPP); and
 - given an Extended Determinate Sentence (EDS).
- 2.3 Decisions to deport pursuant to the EEA Regulations where the person is a minor will not normally be suitable for regulation 24AA certification.
- 2.4 Decisions to deport pursuant to the EEA Regulations where the person has been resident in the UK and exercising Treaty rights for a continuous period of at least five years and the person has not been sentenced to a period of imprisonment of at least four years will not normally be suitable for regulation 24AA certification.
- 2.5 Cases to which the scenarios at 2.3 and 2.4 apply will not usually be suitable for section 94B certification for practical operational reasons, not because there will necessarily be a real risk of serious irreversible harm. Consideration must be given to all cases on an individual basis about whether or not it is appropriate to certify.

Section 3: When to certify a human rights claim under regulation 24AA

- 3.1 Regulation 24AA certification must be considered in all deportation decisions made pursuant to the EEA Regulations unless it is a case to which section 2 of this guidance applies. The “test” phase where regulation 24AA was rolled out to a limited cohort of cases ended on 17 October 2014 and no longer applies.
- 3.2 The Government’s policy is that the deportation process should be as efficient and effective as possible. Case owners should therefore seek to apply regulation 24AA certification in all applicable cases where doing so would not result in serious irreversible harm.

Real risk of serious irreversible harm

- 3.3 For guidance on serious irreversible harm, please see the section 94B certification guidance for Non-EEA deportation cases which is [here](#).

Timing of certification

- 3.4 For guidance on when a regulation 24AA certificate can be applied, please see paragraphs 3.10 to 3.13 of the section 94B certification guidance for Non-EEA deportation cases which is [here](#).

Section 4: Interim orders

- 4.1 Regulation 24AA establishes that removal may not be enforced if:
- the person has made an application for an interim order to suspend removal proceedings (for example, through judicial review); and
 - that application has not yet been determined, or has been determined in favour of the applicant.
- 4.2 Regulation 24AA lists certain exemptions where an application for an interim order will not suspend removal proceedings (as established by Article 31(2) of the Free Movement Directive (2004/38/EC)). An application for an interim order will not suspend removal proceedings if:
- the notice of a decision to make a deportation order is based on a previous judicial decision; or
 - the person has had previous access to judicial review; or
 - the removal decision is based on imperative grounds of public security.
- 4.3 If the person is deported from the UK pursuant to regulation 19(3)(b) at any stage after the person has lodged an appeal then the case owner must notify the Tribunal.
- 4.4 Where a court or tribunal makes an interim order suspending removal, removal will not be possible even if one of the criteria outlined in paragraph 4.2 are met. In these circumstances, contact Litigation Operations (Criminality, Detention & International) to arrange making an application to the court which granted the interim relief to apply to have the effect of the interim order lifted.

Section 5: Re-entry to present appeal in person

- 5.1 Regulation 29AA reflects the requirements of Article 31(4) of the Free Movement Directive (2004/38/EC). Article 31(4) states that, “Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory”.
- 5.2 Accordingly, regulation 29AA establishes a process whereby a person who has lodged an appeal against a deportation decision and who has been deported from the UK may apply from outside the UK for permission to be temporarily admitted to the UK solely for the purpose of making submissions in person at their appeal hearing.
- 5.3 Caseworkers must ensure that the person is notified of the means by which they can make such an application using the following standard paragraphs in the decision to make a deportation order:

“Pursuant to regulation 29AA of the Immigration (European Economic Area) Regulations 2006 (as amended) you may apply from outside the UK for permission to re-enter the UK in order to make submissions in person at your appeal hearing, if you meet the following conditions:

- you appealed within time against the notice of a decision to make a deportation order;
- you were deported from the UK pursuant to regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006 before your appeal was finally determined;
- a date for your appeal has been set; and
- you want to make submissions before the First Tier Tribunal or Upper Tribunal in person.

You should not apply for permission to re-enter unless you have been given a date for your appeal hearing by the Immigration and Asylum Tribunal, and you should provide us with evidence of the date of your appeal hearing.

It is your responsibility to notify the relevant Tribunal of your location and contact details and to update the Tribunal in the event of any changes to your location and contact details.

If you meet these criteria then you may apply for permission to re-enter the UK. You can make this application by contacting Immigration Enforcement at [insert email address].

Permission will not be granted if the Secretary of State considers that your presence would cause serious troubles to public policy or public security.

You must apply for permission in advance of attempting to re-enter the UK or you will be refused admission at the UK Border.

If permission is granted, it will be a temporary admission pursuant to Schedule 2 of the Immigration Act 1971. If you were deported under the Early Removal Scheme then you will be recalled to prison if you are admitted to the UK before the expiry of your sentence. In any other case you are liable to be held in immigration detention for the duration of your stay.

You must leave the UK immediately after your appeal hearing or you will be enforcedly removed.

In the case of any subsequent hearing at which you wish to submit your case in person, you must apply again for permission to re-enter.

Any return to the United Kingdom is entirely at your own cost.”

- 5.4 Under regulation 29AA the Secretary of State must grant such permission, except where the person’s re-admission for the purpose of appearing and making submissions at their appeal hearing may cause serious troubles to public policy or public security.

Section 6: Successful appeals

- 6.1 For guidance on successful appeals where the deportation decision was certified under regulation 24AA, please see the section 94B certification guidance for Non-EEA deportation cases which is [here](#).

Section 7: Change Record

Version	Author(s)	Date	Change References
1.0	LS (CPT)	28/07/2012	First draft.
2.0	LC (CPT)	20/10/2014	Added section 1: introduction;; added section 2: when not to certify; added section 5: re-entry to present appeal in person; added section 6: successful appeals; added section 7: change record.