STATUTORY INSTRUMENTS

2018 No. 801

IMMIGRATION

The Immigration (European Economic Area) (Amendment) Regulations 2018

Made - - - -	*2nd July 2018*
Laid before Parliament	*3rd July 2018*
Coming into force - -	*24th July 2018*

The Secretary of State, being a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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 and those conferred by section 109 of the Nationality, Immigration and Asylum Act 2002(**3**), makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2018.

(2) These Regulations come into force on 24th July 2018.

(3) In these Regulations "the 2016 Regulations" means the Immigration (European Economic Area) Regulations 2016(**4**).

Amendment of the 2016 Regulations

2. The 2016 Regulations are amended as set out in the Schedule.

Transitional provision

3. In determining whether a person satisfies the requirements in regulation 9A(2) to (4) of the 2016 Regulations (dual national: national of an EEA State who acquires British citizenship), inserted by paragraph 4 of the Schedule—

(**1**) S.I. 2000/1813.
(**2**) 1972 c. 68. Section 2(2) was amended by Legislative and Regulatory Reform Act 2006 (c. 51), sections 27(1)(a) and 33; European Union (Amendment) Act 2008 (c. 7), sections 3, 8 and Schedule Part 1; and S.I. 2009/3143.
(**3**) 2002 c. 41.
(**4**) S.I. 2016/1052, as amended by S.I. 2017/1 and S.I. 2017/1242.

(a) the definition of "EEA national" in regulation 2(1) of the 2016 Regulations (general interpretation) is to be read as if the amendment made to that definition by paragraph 1 of the Schedule was in force at all times relevant to such determination; and

(b) regulation 9A of the 2016 Regulations is to be treated as if it was in force at all times relevant to such determination.

Saving provision

4. Notwithstanding the amendment to regulation 37 of the 2016 Regulations (out of country appeals) made by paragraph 15 of the Schedule, regulation 37 as in force immediately before the coming into force of these Regulations continues to apply to an appeal that is pending (within the meaning of regulation 35 of the 2016 Regulations (interpretation of Part 6)).

Caroline Nokes
Minister of State
Home Office

2nd July 2018

SCHEDULE Regulation 2

Amendments to the 2016 Regulations

Regulation 2 (general interpretation)

1. In regulation 2(1), for the definition of "EEA national" substitute—

""EEA national" means—

(a) a national of an EEA State who is not also a British citizen; or

(b) a national of an EEA State who is also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national, in accordance with regulation 14 or 15,

save that a person does not fall within paragraph (b) if the EEA State of which they are a national became a member State after that person acquired British citizenship."

Regulation 6 ("qualified person")

2. In regulation 6—

(a) in paragraph (1), in paragraph (a) of the definition of "relevant period" after "(2)(b)" insert "or self-employed person status under paragraph (4)(b)";

(b) for paragraph (4) substitute—

"(4) A person who is no longer in self-employment must continue to be treated as a self-employed person provided that the person—

(a) is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident;

(b) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for at least one year provided the person—

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions D and E;

(c) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for less than one year, provided the person—

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions D and E;

(d) is involuntarily no longer in self-employment and has embarked on vocational training; or

(e) has voluntarily ceased self-employment and has embarked on vocational training that is related to the person's previous occupation.

(4A) A person to whom paragraph (4)(c) applies may only retain self-employed person status for a maximum of six months.

(4B) Condition D is that the person—

(a) entered the United Kingdom as a self-employed person or in order to seek employment as a self-employed person; or

(b) is present in the United Kingdom seeking employment or self-employment, immediately after enjoying a right to reside under sub-paragraphs (c) to (e) of the

definition of qualified person in paragraph (1) (disregarding any period during which self-employed status was retained pursuant to paragraph (4)(b) or (c)).

(4C) Condition E is that the person provides evidence of seeking employment or self-employment and having a genuine chance of being engaged.";

(c) in paragraph (5)(b), for "sub-paragraphs (b) to (e)" substitute "sub-paragraphs (b), (d) or (e)";

(d) at the end of paragraph (7)(a) omit "or";

(e) after paragraph (7)(b) insert "or (c) a self-employed person under paragraph (4)(b)";

(f) in paragraph (8)—

(i) after "conditions A and B" insert "or, as the case may be, conditions D and E"; and

(ii) in paragraph (a), after "or (c)" insert "or (4)(b) or (c)";

(g) in paragraph (10)(b), after "condition B" insert "or, as the case may be, condition E".

Regulation 9 (family members of British citizens)

3. In regulation 9—

(a) omit "and" at the end of paragraph (2)(b);

(b) after paragraph (2)(c), insert—

"(d) F was a family member of BC during all or part of their joint residence in the EEA State; and

(e) genuine family life was created or strengthened during their joint residence in the EEA State".

New regulation 9A (Dual national: national of an EEA State who acquires British citizenship)

4. After regulation 9 insert—

"**9A Dual national: national of an EEA State who acquires British citizenship**

(1) In this regulation "DN" means a person within paragraph (b) of the definition of "EEA national" in regulation 2(1).

(2) DN who comes within the definition of "qualified person" in regulation 6(1) is only a qualified person for the purpose of these Regulations if DN—

(a) came within the definition of "qualified person" at the time of acquisition of British citizenship; and

(b) has not at any time subsequent to the acquisition of British citizenship lost the status of qualified person.

(3) Regulation 15 only applies to DN, or to the family member of DN who is not an EEA national, if DN satisfies the condition in paragraph (4).

(4) The condition in this paragraph is that at the time of acquisition of British citizenship DN either—

(a) was a qualified person; or

(b) had acquired a right of permanent residence in accordance with these Regulations."

Regulation 11 (right of admission to the United Kingdom)

5. In regulation 11, after paragraph (8) insert—

"(9) A person is not entitled to be admitted by virtue of this regulation where that person is subject to a decision under regulation 23(6)(b) (removal decision).".

Regulation 12 (issue of EEA family permit)

6. In regulation 12, after paragraph (5) insert—

"(5A) An EEA family permit issued under this regulation may be issued in electronic form.".

Regulation 13 (initial right of residence)

7. In regulation 13, in paragraph (4), for "unless that decision is set aside or otherwise no longer has effect", substitute "or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect".

Regulation 14 (extended right of residence)

8. In regulation 14, in paragraph (4), for "unless that decision is set aside or otherwise no longer has effect", substitute "or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect".

Regulation 15 (right of permanent residence)

9. In regulation 15, in paragraph (4), for "unless that decision is set aside or otherwise no longer has effect", substitute "or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect".

Regulation 16 (derivative right to reside)

10. In regulation 16(8)(b)(ii), omit "who is not an exempt person".

Regulation 21 (procedure for applications for documentation under this Part and regulation 12)

11. In regulation 21(**5**)—

(a) in paragraph (2)(a) omit "or joined";

(b) after paragraph (4) insert—

"(4A) An application for documentation under this Part, or for an EEA family permit under regulation 12, is invalid where the person making the application is subject to a removal decision made under regulation 23(6)(b), a deportation order made under regulation 32(3) or an exclusion order made under regulation 23(5).".

(c) in paragraph (5) omit "or joined".

(**5**) Regulation 21 was amended by S.I. 2017/1.

Regulation 24 (refusal to issue or renew and revocation of residence documentation)

12. In regulation 24(**6**), in paragraph (6), after "EEA family permit" insert ", including one issued in electronic form,".

Regulation 27 (decisions taken on grounds of public policy, public security and public health)

13. In regulation 27(4)(a), at the beginning insert "has a right of permanent residence under regulation 15 and who".

Regulation 36 (appeal rights)

14. In regulation 36, after paragraph (11) insert—

"(12) Where there is a requirement under this regulation to produce an EEA family permit—

(a) where notice of appeal is given electronically, the permit may be produced either in paper or electronic form;

(b) in all other cases, the permit must be produced in paper form.".

Regulation 37 (out of country appeals)

15. In regulation 37, for paragraph (2)(a) substitute—

"(a) the person, not being a person who is deemed not to have been admitted to the United Kingdom under regulation 29(3)(**7**)—

(i) holds a valid EEA family permit, registration certificate, residence card, derivative residence card, document certifying permanent residence, permanent residence card or qualifying EEA State residence card on arrival in the United Kingdom; or

(ii) can otherwise prove that the person is resident in the United Kingdom; or".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) ("the 2016 Regulations").

Paragraph 2 of the Schedule to these Regulations amends the 2016 Regulations so as to give effect to the judgment of the Court of Justice of the European Union ("CJEU") in the case of C—442/16 *Gusa.* It does so by amending regulation 6 of the 2016 Regulations to provide that EEA nationals who are no longer working in a self-employed capacity retain their status as a self-employed person.

(**6**) Regulation 24 was amended by S.I. 2017/1.
(**7**) Regulation 29(3) was substituted by S.I. 2017/1242.

Paragraph 3 of the Schedule to these Regulations amends the 2016 Regulations so as to give effect to the judgment of the CJEU in C—456/12 *O and B*. It does so by amending regulation 9 of the 2016 Regulations to provide that, in order to acquire a derived right of residence, a person must have had the status of "family member" within the meaning of Article 2(2) of Directive 2004/38/EC for at least part of their residence in a non-UK EEA Member State with a British citizen exercising Treaty rights.

Paragraphs 1 and 4 of the Schedule to these Regulations amend the 2016 Regulations so as to give effect to the judgment of the CJEU in the case of C—165/16 *Lounes*. They do so by amending the definition of "EEA national" in regulation 2(1) of the 2016 Regulations and inserting a new regulation 9A to provide that a national of an EEA State who is also a British citizen, where British citizenship was acquired after the EEA citizenship and after Treaty rights had been exercised in the UK, may continue to be treated as an EEA national, subject to the requirements of new regulation 9A(2) to (4). There is a related transitional provision in regulation 3 of these Regulations.

Paragraphs 5, 7, 8 and 9 of the Schedule to these Regulations amend respectively regulations 11, 13, 14 and 15 of the 2016 Regulations to make it clear that a person does not have a right of admission to the UK or an initial right of residence, an extended right of residence or a permanent right of residence in the UK if they are subject to an exclusion order or a deportation order. Paragraph 11(b) of the Schedule to these Regulations amends regulation 21 of the 2016 Regulations to provide that an application for an EEA family permit or residence documentation is invalid if submitted when the applicant is subject to an exclusion order or a deportation order.

Paragraph 6 of the Schedule to these Regulations amends regulation 12 of the 2016 Regulations to allow EEA family permits to be issued in an electronic format. Paragraphs 12 and 14 of the Schedule to these Regulations make consequential amendments.

Paragraph 10 of the Schedule to these Regulations amends the 2016 Regulations so as to give effect to the judgment of the CJEU in the case of C—133/15 *Chavez-Vilchez and others*. It does so by amending regulation 16(8)(b) of the 2016 Regulations to allow a person to be recognised as a "primary carer" if they are the sole carer or if they share equally the care with another person, regardless of whether that person is an "exempt person" within the meaning of regulation 16(7)(c).

Paragraph 11(a) and (c) of the Schedule to these Regulations amend regulation 21 of the 2016 Regulations to provide that where a family member applies for an EEA family permit or residence documentation, the relevant EEA national's identity card or passport must accompany the application.

Paragraph 13 of the Schedule to these Regulations amends regulation 27(4)(a) of the 2016 Regulations, which provides that where an EEA national has been resident in the UK for a continuous period of 10 years they cannot be deported except on imperative grounds of public security. Consistently with the judgment of the CJEU in C—426/16 *Vomero*, the amendment provides that this protection only applies to a person who, as well as satisfying the qualifying period of residence, has a permanent right of residence in the UK.

Paragraph 15 of the Schedule to these Regulations amends regulation 37 of the 2016 Regulations to clarify the circumstances in which a person must be outside the UK in order to bring an appeal against an EEA decision. There is a related saving provision in regulation 4 of these Regulations.

An impact assessment has not been produced for these Regulations as no impact on the private, voluntary or public sectors is foreseen.