
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003, as amended, “the 2006 Regulations”) implementing Directive 2004/38/EC of the European Parliament and of 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 (OJNo. L 158, 30.4.04, p77) (“Directive 2004/38/EC”).

These Regulations give effect to certain judgments of the Court of Justice of the European Union (“CJEU”) and address issues concerning the practical application of Directive 2004/38/EC within the United Kingdom. As was the case with the 2006 Regulations, these Regulations also apply to nationals from Norway, Iceland, Liechtenstein and Switzerland and their family members as well as to Union citizens and their family members.

These Regulations are similar in form and approach to the 2006 Regulations. Schedule 7 contains a table of equivalences outlining the way in which provisions of the 2006 Regulations correspond to the provisions of these Regulations.

Part 1 (preliminary: regulations 1 to 10) defines the scope of these Regulations and the terms used throughout. A new definition of civil partnerships, marriages and durable partnerships of convenience features in regulation 2(1) (general interpretation). These terms were not defined in the 2006 Regulations.

Regulation 9 contains an exception to the principle that these Regulations do not apply to British citizens. Where a British citizen has exercised any rights under Directive 2004/38/EC to reside in another EEA State with a family member who is not also a citizen of an EEA State, in certain circumstances these Regulations will confer a right to reside on those family members upon their return to the United Kingdom with the British citizen. The new regulation 9 contains a requirement for such residence in another EEA State to be “genuine” in order for these Regulations to apply to a British citizen and any family members upon return to the United Kingdom. Regulation 9(3) contains indicative criteria as to the factors to be considered by the Secretary of State when determining whether residence in another EEA State was “genuine”. Regulation 9(4) provides that the regulation is of no application in circumstances where the purpose of the residence of the British citizen in the other EEA State was as a route to circumvent any applicable requirement for any non-EEA family members to have leave to enter or remain in the United Kingdom under the Immigration Act 1971. This gives further effect to the CJEU’s judgment in Case C-456/12 *O & B* (ECLI:EU:C:2014:135). Regulation 9(7) applies adjustments to the conditions for being a qualified person where, for the purposes of regulation 9(1), it is a British citizen who needs to satisfy those conditions.

Part 2 (EEA rights: regulations 11 to 16) sets out the rights to admission and to reside conferred on EEA nationals, their family members and those with derivative rights to reside,

Part 3 (residence documentation: regulations 17 to 22) provides for the issue of residence documentation to those who satisfy the conditions in Part 2. A new regulation 21 permits the Secretary of State to require applications for residence documentation under these Regulations to be made using a specified application form, or pursuant to a particular process. Regulation 21(3) requires an applicant for a residence card or derivative residence card to make the application from within the United Kingdom.

Part 4 (refusal of admission and removal etc.: regulations 23 to 28) provides for the exclusion and removal of EEA nationals and their family members. It is based on the approach adopted by Part 4

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of the 2006 Regulations with the addition of a requirement in regulation 27(8) for a court or tribunal to have regard to a new Schedule 1 when they consider whether the requirements of regulation 27 are met. Paragraph 1 of Schedule 1 reflects the margin of appreciation enjoyed by member States to determine their own requirements of public policy and public security, tailored to their own purposes, from time to time (Case 41/74 *Van Duyn* ECLI:EU:C:1974:133). Paragraph 2 onwards of Schedule 1 defines, in terms specific to the United Kingdom, considerations applying to a court or tribunal's consideration of whether there are grounds of public policy or public security in an individual case, or whether one of the fundamental interests of society (as defined in paragraph 8 of Schedule 1) are affected.

Part 5 (procedure in relation to EEA decisions: regulations 29 to 34) makes provision for the admission and control of those seeking to enter or reside in the United Kingdom under these Regulations.

Parts 6 (appeals under these regulations: regulations 35 to 42) and 7 (general: regulations 43 to 46) are based upon the corresponding Parts of the 2006 Regulations and concern appeals under these Regulations and general matters respectively. Schedule 2 deals with the effect of appeals made under Part 6.

These Regulations come into force on 1st February 2017, subject to transitional provisions, except for regulation 44 and Schedule 5, which come into force on 25th November 2016. Schedule 5 replaces regulation 9 of the 2006 Regulations with a new regulation that mirrors regulation 9 of these Regulations. This change to the 2006 Regulation will apply to all decisions on applications made under those Regulations on or after 25th November 2016, irrespective of whether the application was made prior to Schedule 5 coming into force. This transitory provision aims to bring in the new approach to family members of British citizens as soon as possible.

Part 1 of Schedule 4 revokes the 2006 Regulations subject to the savings and modifications in Part 2 of that Schedule.

The remainder of these Regulations (Schedules 3 and 6) deals with matters consequential to the above changes.

These Regulations extend to the whole of the United Kingdom.

An impact assessment has not been produced for these Regulations as no impact on businesses, charities, voluntary bodies or the public sector is foreseen.

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