

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (EUROPEAN ECONOMIC AREA) (AMENDMENT)
REGULATIONS 2017

2017 No. 1

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Immigration (European Economic Area) (Amendment) Regulations 2017 (“the 2017 Regulations”) make technical amendments to the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052, “the 2016 Regulations”). Among other things, these technical amendments ensure the continuation of transitional provision for family members of individuals who are both British citizens and nationals of other European Economic Area (“EEA”) Member States, where those family members had previously been provided with a right of residence under domestic legislation but would no longer have such a right in the absence of transitional provisions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 With the exception of Schedule 5, the 2016 Regulations will come into force on 1 February 2017. They will be amended by the 2017 Regulations before they do so. While Schedule 5 of the 2016 Regulations came into force on 25 November 2016, that Schedule is unaffected by the 2017 Regulations.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 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 States (OJ No. L 158, 30.4.04, p77) (“the Directive”) sets out the right of Union citizens and their family members to move and reside within the territory of the Member States. It has been applied by the EEA Agreement to the remaining non-European Union (EU) EEA States (Iceland, Norway and Liechtenstein). An agreement between the EU, its Member States and Switzerland provides similar rights to nationals of Switzerland (“the Switzerland Agreement”).
- 4.2 The 2016 Regulations, which transpose the Directive and implement the requirements of the EEA Agreement and the Switzerland Agreement, set out the rights of nationals of the EEA and Switzerland (defined in the 2016 Regulations as “EEA nationals”),

their family members and those with a derivative right to reside, to be admitted to, and reside in, the United Kingdom (UK). The 2016 Regulations also make provision for the issue, refusal and revocation of residence documentation and for exclusion or removal from, or refusal of admission to, the UK in certain circumstances.

- 4.3 The 2016 Regulations revoke and replace the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003, “the 2006 Regulations”), which themselves had been subject to amendment in 2009, 2011, 2012, 2013, 2014, 2015 and 2016, to reflect developments in immigration policy and to give effect to certain Court of Justice of the European Union (CJEU) and Upper Tribunal (Immigration and Asylum Chamber) judgments. While Schedule 5 to the 2016 Regulations is already in force, the remainder of the 2016 Regulations come into force on 1 February 2017. The 2017 Regulations make technical, corrective amendments to the 2016 Regulations, which will come into force before the remainder of the 2016 Regulations comes into force.
- 4.4 This sequencing will ensure that there is no break in the rights of residence of family members of individuals who are both British citizens and nationals of other EEA Member States, where those family members had previously been provided with a right of residence under domestic legislation but would no longer have such a right in the absence of transitional provisions.

5. Extent and Territorial Application

- 5.1 This instrument extends and applies to all of the UK.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The 2017 Regulations make technical, corrective amendments to the 2016 Regulations. The details of the policy reasoning behind each amendment are set out below.

Issue of residence card

- 7.2 Paragraph 1 of the Schedule amends regulation 18(7)(a) of the 2016 Regulations so that a residence card must be called “Residence card of a family member of a Union citizen” instead of “Residence card of a family member of an EEA national”. This change is required to bring the wording of residence cards issued by the UK into line with the wording required by Article 10(1) of the Directive, and to reflect correctly the wording currently used on residence cards issued by the Home Office. The change has no effect on the rights of individuals to obtain residence cards. It is a formal change to ensure consistency between domestic practice and legislation. Residence cards will continue to be issued to the family members of nationals from the EEA states and Switzerland.

Procedure for applications for documentation under this Part and regulation 12

- 7.3 Paragraph 2 of the Schedule corrects a cross-reference in regulation 21(2)(a) of the 2016 Regulations. This change will ensure it is clear that when a non-EEA national

applies for a document under the 2016 Regulations as the family member or extended family member of an EEA national that application must be accompanied or joined by the valid national identity card or passport of the relevant EEA national.

Refusal to issue or renew and revocation of residence documentation

- 7.4 Paragraph 3 of the Schedule amends regulation 24(6) of the 2016 Regulations to ensure that immigration officers can revoke EEA family permits. This reflects the wording contained in regulation 20(5) of the 2006 Regulations, which permitted both entry clearance officers and immigration officers to revoke EEA family permits. It is the Government's view that immigration officers should retain these powers, as entry clearance officers are not present at the border. EEA family permits can only be revoked in limited circumstances: (i) if the revocation is justified on grounds of public policy, public security or public health; or (ii) if the person is not the family member of an EEA national with the right to reside in the UK or is not accompanying the EEA national or joining the EEA national in the UK.

Amendment to Schedule 4 to save the application of the 2006 Regulations in relation to appeals against EEA decisions made under those Regulations

- 7.5 Paragraph 4 of the Schedule inserts a new paragraph 3 into Schedule 4 to the 2016 Regulations to clarify that the 2016 Regulations do not affect an appeal against, or a person's right to appeal against, an EEA decision made under the 2006 Regulations. The provisions of the 2006 Regulations will apply to an appeal against a decision made under those Regulations irrespective of whether the appeal commences, or is to be continued, after 1 February 2017.

Amendment to Schedule 6 to provide transitional provision for family members of dual nationals

- 7.6 Paragraph 5 of the Schedule inserts a new paragraph 9 into Schedule 6 to the 2016 Regulations. Paragraph 9 reinstates the relevant aspects of the transitional provisions from paragraph 2 of Schedule 3 to the Immigration (European Economic Area) (Amendment) Regulations 2012 (S.I. 2012/1547, "the 2012 Regulations"), which protected family members of dual nationals who held British citizenship and citizenship of another EEA Member State, where those family members began residing in the UK under the 2006 Regulations before the definition of "EEA national" was changed to exclude British citizens on 16 July 2012. As the 2012 Regulations are to be revoked by the 2016 Regulations, reinstating the transitional provisions for relevant family members who were legally resident in the UK on 16 July 2012 or who had applied to enter the UK before that date ensures that their right to reside will continue uninterrupted under the 2016 Regulations.

8. Consultation outcome

- 8.1 The 2017 Regulations correct the 2016 Regulations and do not represent a change in policy, therefore no external consultation has been undertaken.

9. Guidance

- 9.1 No specific guidance is required for the 2017 Regulations, as they only make technical changes to the 2016 Regulations and ensure the current policy in the relevant areas under the 2006 Regulations can be continued under the 2016 Regulations.

10. Impact

- 10.1 An impact assessment has not been produced for the 2017 Regulations as no impact on businesses, charities, voluntary bodies or the public sector is foreseen.

11. Regulating small business

- 11.1 The legislation does not apply to small businesses.

12. Monitoring & review

- 12.1 The Home Office will closely monitor the impact of the 2016 Regulations.
- 12.2 Further amendments to the 2016 Regulations will be required in due course as relevant provisions of the Immigration Act 2016 are brought into force.

13. Contact

- 13.1 Isla Scott, Free Movement and Migrant Criminality Unit, Home Office, Tel: 020 7035 4979 or email: isla.scott1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.