

SCHEDULE 1

Regulation 3

Amendments to the Immigration (European Economic Area) Regulations 2006

Regulation 2 (general interpretation)

1. In regulation 2(1)—

(a) in the appropriate places insert—

““derivative residence card” means a card issued to a person, in accordance with regulation 18A, as proof of the holder’s derivative right to reside in the United Kingdom as at the date of issue;” and

““durable partner” does not include the durable partner (“D”) of a person (“P”) where a spouse, civil partner or durable partner of D or P is already present in the United Kingdom and where that marriage, civil partnership or durable partnership is subsisting;”;

(b) for the definition of “civil partner” substitute—

““civil partner” does not include—

(a) a party to a civil partnership of convenience; or

(b) the civil partner (“C”) of a person (“P”) where a spouse, civil partner or durable partner of C or P is already present in the United Kingdom;”;

(c) for the definition of “EEA decision” substitute—

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

(a) a person’s entitlement to be admitted to the United Kingdom;

(b) a person’s entitlement to be issued with or have renewed, or not to have revoked, a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card;

(c) a person’s removal from the United Kingdom; or

(d) the cancellation, pursuant to regulation 20A, of a person’s right to reside in the United Kingdom;”;

(d) in the definition of “EEA national” after “a national of an EEA State” insert “who is not also a United Kingdom national”; and

(e) for the definition of “spouse” substitute—

““spouse” does not include—

(a) a party to a marriage of convenience; or

(b) the spouse (“S”) of a person (“P”) where a spouse, civil partner or durable partner of S or P is already present in the United Kingdom;”.

Regulation 4 (“Worker”, “self-employed person”, “self-sufficient person” and “student”)

2. In regulation 4—

(a) in paragraph (1) for subparagraph (d)(i) substitute—

“(i) is enrolled, for the principal purpose of following a course of study (including vocational training), at a public or private establishment which is—

(aa) financed from public funds; or

(bb) otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or

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training within the law or administrative practice of the part of the United Kingdom in which the establishment is located;” and

(b) at the end insert—

“(5) For the purpose of regulation 15A(2) references in this regulation to “family members” includes a “primary carer” as defined in regulation 15A(7).”.

Regulation 10 (“family member who has retained the right of residence”)

3. In regulation 10—

(a) For paragraph (2)(a) substitute—

“(a) he was a family member of a qualified person or of an EEA national with a permanent right of residence when that person died;”;

(b) for paragraph (5)(a) substitute—

“(a) he ceased to be a family member of a qualified person or of an EEA national with a permanent right of residence on the termination of the marriage or civil partnership of that person;”

(c) for paragraph (5)(d)(iii) substitute—

“(iii) the former spouse or civil partner of the qualified person or the EEA national with a permanent right of residence has the right of access to a child of the qualified person or the EEA national with a permanent right of residence, where the child is under the age of 18 and where a court has ordered that such access must take place in the United Kingdom; or”;

(d) for the references to “the qualified person” in paragraphs (2)(b), (3)(a)(iii), (3)(b), (5)(d)(ii) and (8) substitute “the qualified person or the EEA national with a permanent right of residence”;

(e) for the reference to “a qualified person” in paragraph (3)(a)(i) substitute “a qualified person or an EEA national with a permanent right of residence”; and

Regulation 11 (right of admission to the United Kingdom)

4. In regulation 11—

(a) in paragraph (2)—

(i) after “a family member who has retained a right of residence” insert “, a person who meets the criteria in paragraph (5)”;

(ii) in subparagraph (b) after “a residence card” insert “, a derivative residence card”;

(b) in paragraph (3) after “a residence card” insert “, a derivative residence card”;

(c) in paragraph (4)—

(i) in subparagraph (b) after “join him in the United Kingdom;” omit “or”; and

(ii) after subparagraph (b) insert—

“(ba) a person who meets the criteria in paragraph (5); or”; and

(d) renumber and reorder paragraph (5) as paragraph (8) and after paragraph (4) insert—

“(5) A person (“P”) meets the criteria in this paragraph where—

(a) P previously resided in the United Kingdom pursuant to regulation 15A(3) and would be entitled to reside in the United Kingdom pursuant to that regulation were P in the country;

- (b) P is accompanying an EEA national to, or joining an EEA national in, the United Kingdom and P would be entitled to reside in the United Kingdom pursuant to regulation 15A(2) were P and the EEA national both in the United Kingdom;
- (c) P is accompanying a person (“the relevant person”) to, or joining the relevant person in, the United Kingdom and—
 - (i) the relevant person is residing, or has resided, in the United Kingdom pursuant to regulation 15A(3); and
 - (ii) P would be entitled to reside in the United Kingdom pursuant to regulation 15A(4) were P and the relevant person both in the United Kingdom.
- (d) P is accompanying a person who meets the criteria in (b) or (c) (“the relevant person”) to the United Kingdom and—
 - (i) P and the relevant person are both—
 - (aa) seeking admission to the United Kingdom in reliance on this paragraph for the first time; or
 - (bb) returning to the United Kingdom having previously resided there pursuant to the same provisions of regulation 15A in reliance on which they now base their claim to admission; and
 - (ii) P would be entitled to reside in the United Kingdom pursuant to regulation 15A(5) were P and the relevant person there.
- (6) Paragraph (7) applies where—
 - (a) a person (“P”) seeks admission to the United Kingdom in reliance on paragraph (5)(b) or (c); and
 - (b) if P were in the United Kingdom, P would have a derived right of residence by virtue of regulation 15A(7)(b)(ii).
- (7) Where this paragraph applies a person (“P”) will only be regarded as meeting the criteria in paragraph (5)(b) or (c) where P—
 - (a) is accompanying the person with whom P would on admission to the United Kingdom jointly share care responsibility for the purpose of regulation 15A(7)(b)(ii); or
 - (b) has previously resided in the United Kingdom pursuant to regulation 15A(2) or (4) as a joint primary carer and seeks admission to the United Kingdom in order to reside there again on the same basis.”.

Regulation 12 (issue of EEA family permit)

5. In regulation 12—

(a) after paragraph (1) insert—

“(1A) An entry clearance officer must issue an EEA family permit to a person who applies and provides proof that, at the time at which he first intends to use the EEA family permit, he—

- (a) would be entitled to be admitted to the United Kingdom by virtue of regulation 11(5); and
- (b) will (save in the case of a person who would be entitled to be admitted to the United Kingdom by virtue of regulation 11(5)(a)) be accompanying to, or joining in, the United Kingdom any person from whom his right to be admitted to the United Kingdom under regulation 11(5) will be derived.

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(1B) An entry clearance officer must issue an EEA family permit to a family member who has retained the right of residence.”;

(b) in paragraph (5) from “is subject to a deportation or exclusion order” until the end substitute “is not entitled to be admitted to the United Kingdom as a result of regulation 19(1A) or falls to be excluded in accordance with regulation 19(1B)”;

(c) after paragraph (5) insert—

“(6) An EEA family permit will not be issued under this regulation to a person (“A”) who is the spouse, civil partner or durable partner of a person (“B”) where a spouse, civil partner or durable partner of A or B holds a valid EEA family permit.”.

Regulation 13 (initial right of residence)

6. In regulation 13—

(a) in paragraph (2) after “family member of an EEA national” insert “or a family member who has retained the right of residence who is”; and

(b) for paragraph (3) substitute—

“(3) An EEA national or his family member who becomes an unreasonable burden on the social assistance system of the United Kingdom will cease to have a right to reside under this regulation.

(4) A person who otherwise satisfies the criteria in this regulation will not be entitled to reside in the United Kingdom under this regulation where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).”.

Regulation 14 (extended right of residence)

7. In regulation 14 for paragraph (5) substitute—

“(5) A person who otherwise satisfies the criteria in this regulation will not be entitled to a right to reside in the United Kingdom under this regulation where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).”.

Regulation 15 (permanent right of residence)

8. In regulation 15—

(a) after paragraph (1) insert—

“(1A) Residence in the United Kingdom as a result of a derivative right of residence does not constitute residence for the purpose of this regulation.”;

(b) in paragraph (2) for “Once acquired, the” substitute “The”; and

(c) for paragraph (3) substitute—

“(3) A person who satisfies the criteria in this regulation will not be entitled to a permanent right to reside in the United Kingdom where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).”.

New regulation 15A (derivative right of residence)

9. After regulation 15 insert—

“15A. Derivative right of residence

(1) A person (“P”) who is not entitled to reside in the United Kingdom as a result of any other provision of these Regulations and who satisfies the criteria in paragraph (2), (3), (4) or (5) of this regulation is entitled to a derivative right to reside in the United Kingdom for as long as P satisfies the relevant criteria.

(2) P satisfies the criteria in this paragraph if—

(a) P is the primary carer of an EEA national (“the relevant EEA national”); and

(b) the relevant EEA national—

(i) is under the age of 18;

(ii) is residing in the United Kingdom as a self-sufficient person; and

(iii) would be unable to remain in the United Kingdom if P were required to leave.

(3) P satisfies the criteria in this paragraph if—

(a) P is the child of an EEA national (“the EEA national parent”);

(b) P resided in the United Kingdom at a time when the EEA national parent was residing in the United Kingdom as a worker; and

(c) P is in education in the United Kingdom and was in education there at a time when the EEA national parent was in the United Kingdom.

(4) P satisfies the criteria in this paragraph if—

(a) P is the primary carer of a person meeting the criteria in paragraph (3) (“the relevant person”); and

(b) the relevant person would be unable to continue to be educated in the United Kingdom if P were required to leave.

(5) P satisfies the criteria in this paragraph if—

(a) P is under the age of 18;

(b) P’s primary carer is entitled to a derivative right to reside in the United Kingdom by virtue of paragraph (2) or (4);

(c) P does not have leave to enter, or remain in, the United Kingdom; and

(d) requiring P to leave the United Kingdom would prevent P’s primary carer from residing in the United Kingdom.

(6) For the purpose of this regulation—

(a) “education” excludes nursery education; and

(b) “worker” does not include a jobseeker or a person who falls to be regarded as a worker by virtue of regulation 6(2).

(7) P is to be regarded as a “primary carer” of another person if

(a) P is a direct relative or a legal guardian of that person; and

(b) P—

(i) is the person who has primary responsibility for that person’s care; or

(ii) shares equally the responsibility for that person’s care with one other person who is not entitled to reside in the United Kingdom as a result of any other provision of these Regulations and who does not have leave to enter or remain.

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(8) P will not be regarded as having responsibility for a person’s care for the purpose of paragraph (7) on the sole basis of a financial contribution towards that person’s care.

(9) A person who otherwise satisfies the criteria in paragraph (2), (3), (4) or (5) will not be entitled to a derivative right to reside in the United Kingdom where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).”.

New regulation 15B (continuation of right of residence)

10. After regulation 15A insert—

“15B. Continuation of a right of residence

(1) This regulation applies during any period in which, but for the effect of regulation 13(4), 14(5), 15(3) or 15A(9), a person (“P”) who is in the United Kingdom would be entitled to reside here pursuant to these Regulations.

(2) Where this regulation applies, any right of residence will (notwithstanding the effect of regulation 13(4), 14(5), 15(3) or 15A(9)) be deemed to continue during any period in which—

- (a) an appeal under regulation 26 could be brought, while P is in the United Kingdom, against a relevant decision (ignoring any possibility of an appeal out of time with permission); or
- (b) an appeal under regulation 26 against a relevant decision, brought while P is in the United Kingdom, is pending (within the meaning of section 104 of the 2002 Act).

(3) Periods during which residence pursuant to regulation 14 is deemed to continue as a result of paragraph (2) will not constitute residence for the purpose of regulation 15 unless and until—

- (a) a relevant decision is withdrawn by the Secretary of State; or
- (b) an appeal against a relevant decision is allowed and that appeal is finally determined (within the meaning of section 104 of the 2002 Act).

(4) Periods during which residence is deemed to continue as a result of paragraph (2) will not constitute residence for the purpose of regulation 21(4)(a) unless and until—

- (a) a relevant decision is withdrawn by the Secretary of State; or
- (b) an appeal against a relevant decision is allowed and that appeal is finally determined (within the meaning of section 104 of the 2002 Act).

(5) A “relevant decision” for the purpose of this regulation means a decision pursuant to regulation 19(3)(b), 20(1) or 20A(1) which would, but for the effect of paragraph (2), prevent P from residing in the United Kingdom pursuant to these Regulations.”.

New regulation 18A (derivative residence card)

11. After regulation 18 insert—

“18A. Issue of a derivative residence card

(1) The Secretary of State must issue a person with a derivative residence card on application and on production of—

- (a) a valid identity card issued by an EEA State or a valid passport; and
- (b) proof that the applicant has a derivative right of residence under regulation 15A.

(2) On receipt of an application under paragraph (1) the Secretary of State must issue the applicant with a certificate of application as soon as possible.

(3) A derivative residence card issued under paragraph (1) may take the form of a stamp in the applicant's passport and will be valid until—

- (a) a date five years from the date of issue; or
- (b) any other date specified by the Secretary of State when issuing the derivative residence card.

(4) A derivative residence card issued under paragraph (1) must be issued free of charge and as soon as practicable.

(5) But this regulation is subject to regulations 20(1) and 20(1A).”.

Regulation 20 (refusal to issue or renew and revocation of residence document)

12. In regulation 20(1A) for “The removal of a person from the United Kingdom under these Regulations invalidates” substitute “A decision under regulation 19(3) to remove a person from the United Kingdom will (save during any period in which a right of residence is deemed to continue as a result of regulation 15B(2)) invalidate”.

New regulation 20A (cancellation of right of residence)

13. After regulation 20 insert—

“20A. Cancellation of a right of residence

(1) Where the conditions in paragraph (2) are met the Secretary of State may cancel a person's right to reside in the United Kingdom pursuant to these Regulations.

(2) The conditions in this paragraph are met where—

- (a) a person has a right to reside in the United Kingdom as a result of these Regulations;
- (b) the Secretary of State has decided that the cancellation of that person's right to reside in the United Kingdom is justified on grounds of public policy, public security or public health in accordance with regulation 21;
- (c) the circumstances are such that the Secretary of State cannot make a decision under regulation 20(1); and
- (d) it is not possible for the Secretary of State to remove the person from the United Kingdom pursuant to regulation 19(3)(b).”.

New regulation 21A (application of Part 4 to persons with a derivative right of residence)

14. After regulation 21 insert—

“21A. Application of Part 4 to persons with a derivative right of residence

(1) Where this regulation applies Part 4 of these Regulations applies subject to the modifications listed in paragraph (3).

(2) This regulation applies where a person—

- (a) would, notwithstanding Part 4 of these Regulations, have a right to be admitted to, or reside in, the United Kingdom by virtue of a derivative right of residence arising under regulation 15A(2), (4) or (5);

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- (b) holds a derivative residence card; or
 - (c) has applied for a derivative residence card.
- (3) Where this regulation applies Part 4 applies in relation to the matters listed in paragraph (2) as if—
- (a) references to a matter being “justified on grounds of public policy, public security or public health in accordance with regulation 21” referred instead to a matter being “conducive to the public good”;
 - (b) the reference in regulation 20(5)(a) to a matter being “justified on grounds of public policy, public security or public health” referred instead to a matter being “conducive to the public good”;
 - (c) references to “the family member of an EEA national” referred instead to “a person with a derivative right of residence”;
 - (d) references to “a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card” referred instead to “a derivative residence card”;
 - (e) the reference in regulation 19(1A) to a deportation or exclusion order referred also to a deportation or exclusion order made under any provision of the immigration Acts.
 - (f) regulation 20(4) instead conferred on an immigration officer the power to revoke a derivative residence card where the holder is not at that time a person with a derivative right of residence; and
 - (g) regulations 20(3), 20(6) and 21 were omitted.”.

Regulation 22 (person claiming right of admission)

15. In regulation 22(1)(a) after “a family member who has retained the right of residence” insert “, a person who has a derivative right of residence”.

Regulation 23 (person refused admission)

16. In regulation 23 at paragraphs (1)(a) and (2) after “EEA family permit, residence card” insert “, derivative residence card”.

Regulation 24 (person subject to removal)

17. In regulation 24—

- (a) in paragraph (1) for “regulation 19(3)” substitute “regulation 19(3)(b)” and for “an immigration officer” substitute “the Secretary of State”; and
- (b) after paragraph (6) insert—
 - “(7) Paragraph (6) of this regulation does not apply where a decision has been taken under regulation 19(3) on the basis that the relevant person—
 - (a) has ceased to have a derivative right of residence; or
 - (b) is a person who would have had a derivative right of residence but for the effect of a decision to remove under regulation 19(3)(b).”.

Regulation 24A (revocation of deportation and exclusion orders)

18. In regulation 24A(4) for “the order can no longer be justified on grounds of public policy, public security or public health in accordance with regulation 21” substitute “the criteria for making such an order are no longer satisfied”.

Regulation 25 (interpretation of Part 6)

19. In paragraph (1) of regulation 25—

- (a) delete the definitions of “the Human Rights Convention” and “the Refugee Convention”; and
- (b) in the appropriate places insert—
 - ““Asylum claim” has the meaning given in section 113(1) of the 2002 Act;” and
 - ““Human rights claim” has the meaning given in section 113(1) of the 2002 Act.”.

Regulation 26 (appeal rights)

20. In regulation 26—

(a) for paragraph (3) substitute—

“(3) If a person claims to be a family member who has retained the right of residence or the family member or relative of an EEA national he may not appeal under these Regulations unless he produces—

- (a) a valid national identity card issued by an EEA State or a passport; and
- (b) either—
 - (i) an EEA family permit;
 - (ii) proof that he is the family member or relative of an EEA national; or
 - (iii) in the case of a person claiming to be a family member who has retained the right of residence, proof that he was a family member of the relevant person.”; and

(b) after paragraph (3) insert—

“(3A) If a person claims to be a person with a derivative right of residence he may not appeal under these Regulations unless he produces a valid national identity card issued by an EEA State or a passport, and either—

- (a) an EEA family permit; or
- (b) proof that—
 - (i) where the person claims to have a derivative right of residence under regulation 15A(2), he is a direct relative or guardian of an EEA national who is under the age of 18;
 - (ii) where the person claims to have a derivative right of residence under regulation 15A(3), he is the child of an EEA national;
 - (iii) where the person claims to have a derivative right of residence under regulation 15A(4), he is a direct relative or guardian of the child of an EEA national;
 - (iv) where the person claims to have a derivative right of residence under regulation 15A(5), he is under the age of 18 and is a dependant of a person satisfying the criteria in (i) or (iii).”.

Regulation 27 (out of country appeals)

21. In regulation 27—

- (a) at the end of paragraph (1)(c) delete the word “or” and then insert—
 - “(ca) to revoke, or to refuse to issue or renew any document under these Regulations where that decision is taken at a time when the relevant person is outside the United Kingdom; or”;
- (b) in paragraph (2)(a) after “registration certificate, residence card,” insert “derivative residence card,”; and
- (c) for paragraph (2)(c) substitute—
 - “(c) has made an asylum or human rights claim (or both), unless the Secretary of State has certified that the claim or claims is or are clearly unfounded.”;
- (d) for paragraph (3) substitute—
 - “(3) Paragraph (1)(d) does not apply where the person has made an asylum or human rights claim (or both), unless the Secretary of State has certified that the claim or claims is or are clearly unfounded.”.

Schedule 2, paragraph 2 (persons not subject to restriction on the period for which they may remain)

22. In paragraph 2(2) of Schedule 2 after “the family member of a qualified person” insert “, a person with a derivative right of residence”.

Schedule 2, paragraph 3 (carriers’ liability under the 1999 Act)

23. In paragraph 3 of Schedule 2 after “a residence card” insert “, a derivative residence card”.

Schedule 2, paragraph 4 (appeals under the 2002 Act and previous immigration Acts)

24. In paragraph 4 of Schedule 2—

- (a) in subparagraph (2) after “registration certificate, residence card,” insert “derivative residence card,”; and
- (b) in subparagraph (9) for “(1)” substitute “(2)”.

Schedule 4, paragraph 6 (periods of residence under the 2000 Regulations)

25. For paragraph 6 of Schedule 4 substitute—

“6. Periods of residence prior to the entry into force of these Regulations

(1) Any period during which a person (“P”), who is an EEA national, carried out an activity or was resident in the United Kingdom in accordance with the conditions in subparagraph (2) or (3) is to be treated as a period during which the person carried out that activity or was resident in the United Kingdom in accordance with these Regulations for the purpose of calculating periods of activity and residence there under.

(2) P carried out an activity, or was resident, in the United Kingdom in accordance with this subparagraph where such activity or residence was at that time in accordance with—

- (a) the 2000 Regulations;

- (b) the Immigration (European Economic Area) Order 1994⁽¹⁾ (“the 1994 Order”); or
- (c) where such activity or residence preceded the entry into force of the 1994 Order, any of the following Directives which was at the relevant time in force in respect of the United Kingdom—
 - (i) Council Directive 64/221/EEC⁽²⁾;
 - (ii) Council Directive 68/360/EEC⁽³⁾;
 - (iii) Council Directive 72/194/EEC⁽⁴⁾;
 - (iv) Council Directive 73/148/EEC⁽⁵⁾;
 - (v) Council Directive 75/34/EEC⁽⁶⁾;
 - (vi) Council Directive 75/35/EEC⁽⁷⁾;
 - (vii) Council Directive 90/364/EEC⁽⁸⁾;
 - (viii) Council Directive 90/365/EEC⁽⁹⁾; and
 - (ix) Council Directive 93/96/EEC⁽¹⁰⁾.
- (3) P carried out an activity or was resident in the United Kingdom in accordance with this subparagraph where P—
 - (a) had leave to enter or remain in the United Kingdom; and
 - (b) would have been carrying out that activity or residing in the United Kingdom in accordance with these Regulations had the relevant state been an EEA State at that time and had these Regulations at that time been in force.
- (4) Any period during which P carried out an activity or was resident in the United Kingdom in accordance with subparagraph (2) or (3) will not be regarded as a period during which P carried out that activity or was resident in the United Kingdom in accordance with these Regulations where it was followed by a period—
 - (a) which exceeded two consecutive years and for the duration of which P was absent from the United Kingdom; or
 - (b) which exceeded two consecutive years and for the duration of which P’s residence in the United Kingdom—
 - (i) was not in accordance with subparagraph (2) or (3); or
 - (ii) was not otherwise in accordance with these Regulations.
- (5) The relevant state for the purpose of subparagraph (3) is the state of which P is, and was at the relevant time, a national.”.

(1) S.I. 1994/1895, amended by S.I. 1997/2981.
(2) Series I Chapter 1963-1964 P.0117.
(3) Series I Chapter 1968(II) P.0485.
(4) Series I Chapter 1972(11) P.0474.
(5) OJ No L 172, 28.6.1973, p. 14–16.
(6) OJ No L 14, 20.1.1975, p. 10–13.
(7) OJ No L 14, 20.1.1975, p. 14.
(8) OJ No L 180, 13.7.1990, p. 26–27.
(9) OJ No L 180, 13.7.1990, p. 28–29.
(10) OJ No L 317, 18.12.1993, p. 59–60.