

**2012 No. 1547**

**IMMIGRATION**

**The Immigration (European Economic Area) (Amendment)  
Regulations 2012**

*Made* - - - - *19th June 2012*

*Laid before Parliament* *22nd June 2012*

*Coming into force in accordance with Regulation 2*

The Secretary of State, being a Minister designated(a) for the purpose of section 2(2) of the European Communities Act 1972(b) 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 of the powers conferred by section 109 of the Nationality, Immigration and Asylum Act 2002(c), makes the following Regulations:

**Citation**

1. These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2012.

**Commencement**

2.—(1) Subject to paragraph (2) these Regulations will come into force on 16th July 2012.  
(2) Paragraph 1(d) of Schedule 1 to these Regulations will come into force on 16th October 2012.

**Amendment of the Immigration (European Economic Area) Regulations 2006**

3. The Immigration (European Economic Area) Regulations 2006(d) are amended as set out in Schedule 1.

**Consequential amendments and transitional provisions**

4. Schedule 2 (consequential amendments) and Schedule 3 (transitional provisions) have effect.

Home Office  
19th June 2012

*Damian Green*  
Minister of State

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(a) S.I. 2000/1813.  
(b) 1972 c.68; section 2(2) was amended by paragraph 1 of Schedule 1(1) to the European Union (Amendment) Act 2008 (c.7) and by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51).  
(c) 2002 c.41.  
(d) S.I. 2006/1003; relevant amending instruments are S.I. 2006/3317, S.I. 2007/3224, S.I. 2009/1117, S.I. 2011/544, S.I. 2010/21, S.I. 2010/708, S.I. 2010/1593 and S.I. 2011/1247.

## 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 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.
  - (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.
- (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);
- (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 person 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;”;
  - ““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.”;
- (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(a) (“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(b);
  - (ii) Council Directive 68/360/EEC(c);
  - (iii) Council Directive 72/194/EEC(d);
  - (iv) Council Directive 73/148/EEC(e);
  - (v) Council Directive 75/34/EEC(f);
  - (vi) Council Directive 75/35/EEC(g);
  - (vii) Council Directive 90/364/EEC(h);
  - (viii) Council Directive 90/365/EEC(i); and
  - (ix) Council Directive 93/96/EEC(j).

(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.”.

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(a) S.I. 1994/1895, amended by S.I. 1997/2981.  
(b) Series I Chapter 1963-1964 P.0117.  
(c) Series I Chapter 1968(II) P.0485.  
(d) Series I Chapter 1972(11) P.0474.  
(e) OJ No L 172, 28.6.1973, p. 14–16.  
(f) OJ No L 14, 20.1.1975, p. 10–13.  
(g) OJ No L 14, 20.1.1975, p. 14.  
(h) OJ No L 180, 13.7.1990, p. 26–27.  
(i) OJ No L 180, 13.7.1990, p. 28–29.  
(j) OJ No L 317, 18.12.1993, p. 59–60.

## SCHEDULE 2

Regulation 4

### Consequential Amendments

#### **The Channel Tunnel (International Arrangements) Order 1993**

1. In paragraph 5(a) of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993(a) after “family permit, residence card” insert “, derivative residence card”.

#### **The Immigration (Notices) Regulations 2003**

2. In regulation 2 of the Immigration (Notices) Regulations 2003(b) for the definition of “EEA decision” substitute—

““EEA Decision” has the same meaning as in regulation 2(1) of the Immigration (European Economic Area) Regulations 2006”.

#### **The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003**

3. In paragraph 5(b) of Schedule 2 to the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003(c) after “family permit, residence card” insert “, derivative residence card”.

#### **The Immigration (Restrictions on Employment) Order 2007**

4. In List B of Schedule 1 to the Immigration (Restrictions on Employment) Order 2007(d)

- (a) in paragraph 4 after “Immigration Agency to or for” insert “a person who has applied under regulation 18A(1) of the Immigration (European Economic Area) Regulations 2006, or to or for”; and
- (b) after paragraph 5 insert—

“5A. A derivative residence card issued by the Home Office or the UK Borders Agency to a person.”.

## SCHEDULE 3

Regulation 4

### Transitional Provisions

#### **Interpretation**

1. In this Schedule—

- (a) the “2006 Regulations” means the Immigration (European Economic Area) Regulations 2006; and
- (b) the terms “EEA family permit”, “EEA State”, “family member”, “registration certificate” and “residence card” have the meanings given in regulation 2(1) of the 2006 Regulations.

#### **Amendments to the definition of EEA national**

2.—(1) Where the right of a family member (“F”) to be admitted to, or reside in, the United Kingdom pursuant to the 2006 Regulations depends on the fact that a person (“P”) is an EEA

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(a) S.I. 1993/1813; relevant amending instruments are S.I. 2001/3707 and S.I. 2006/1003.

(b) S.I. 2003/658; relevant amending instrument is S.I. 2009/1117.

(c) S.I. 2003/2818; relevant amending instrument is S.I. 2006/1003.

(d) S.I. 2007/3290, to which there are amendments not relevant to these Regulations.

national, P will, notwithstanding the effect of paragraph 1(d) of Schedule 1 to these Regulations, continue to be regarded as an EEA national for the purpose of the 2006 Regulations where the criteria in subparagraphs (2), (3) or (4) are met and for as long as they remain satisfied in accordance with subparagraph (5).

(2) The criterion in this subparagraph is met where F was on 16th July 2012 a person with a permanent right to reside in the United Kingdom under the 2006 Regulations.

(3) The criteria in this subparagraph are met where F—

- (a) was on the 16th July 2012 a person with a right to reside in the United Kingdom under the 2006 Regulations; and
- (b) on the 16th October 2012—
  - (i) held a valid registration certificate or residence card issued under the 2006 Regulations;
  - (ii) had made an application under the 2006 Regulations for a registration certificate or residence card which had not been determined; or
  - (iii) had made an application under the 2006 Regulations for a registration certificate or residence card which had been refused and in respect of which an appeal under regulation 26 could be brought while the appellant is in the United Kingdom (excluding the possibility of an appeal out of time with permission) or was pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002(a)).

(4) The criteria in this subparagraph are met where F—

- (a) had, prior to the 16th July 2012, applied for an EEA family permit pursuant to regulation 12 of the 2006 Regulations; or
- (b) has applied for and been refused an EEA family permit and where, on the 16<sup>th</sup> July 2012, an appeal under regulation 26 against that decision could be brought (excluding the possibility of an appeal out of time with permission) or was pending (within the meaning of section 104 of the 2002 Act).

(5) Where met, the criteria in subparagraph (2), (3) and (4) remain satisfied until the occurrence of the earliest of the following events—

- (a) the date six months after an EEA family permit has been issued if F has not within that period been admitted to the United Kingdom;
- (b) the date on which an appeal against a decision referred to in subparagraph (3)(b)(iii) or (4)(b) can no longer be brought (ignoring the possibility of an appeal out of time with permission) where no such appeal has been brought;
- (c) the date on which any appeal against a decision referred to in subparagraph (3)(b)(iii) or (4)(b) is finally determined, is withdrawn or is abandoned (within the meaning of section 104 of the 2002 Act) (save where the outcome of the appeal process is that the document in question falls to be granted);
- (d) the date on which F ceases to be the family member of an EEA national; or
- (e) the date on which a right of permanent residence under regulation 15 of the 2006 Regulations is lost in accordance with regulation 15(2) of those Regulations.

(6) P will only continue to be regarded as an EEA national for the purpose of considering the position of F under the 2006 Regulations.

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(a) 2002 c.41; section 104 was amended by paragraphs 20(a) and (b) of Schedule 2(1) to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19), by section 9 of the Immigration, Asylum and Nationality Act 2006 (c.13), and by paragraphs 26(a) and (b) of Schedule 1 to S.I. 2010/21.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) in order—

- (a) to give effect to judgments of the Court of Justice of the European Union (“the ECJ”) concerning the circumstances in which individuals can be admitted to, and reside in, the United Kingdom; and
- (b) to address issues concerning the transposition of Directive 2004/38/EC and the practical application of the 2006 Regulations.

Paragraphs 4 and 9 of Schedule 1 to these Regulations amend the 2006 Regulations so as give effect to the judgment of the ECJ in the case of C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department*. They do so by providing rights of entry and residence for the primary carer of an EEA national, who is (a) under the age of 18 and (b) residing in the United Kingdom as a self sufficient person, where the denial of such a right would prevent the EEA national child from exercising his or her own right of residence.

Paragraphs 4 and 9 of Schedule 1 to these Regulations amend the 2006 Regulations so as to give effect to the judgments of the ECJ in the cases of C-310/08 *Nimco Hassan Ibrahim v London Borough of Harrow and Secretary of State for the Home Department* and C-480/08 *Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department*. They do so by conferring rights of entry and residence—

- (a) on the child of an EEA national where the child is in education in the United Kingdom and had entered the United Kingdom and begun to reside there at a time when their EEA national parent was residing as a worker; and
- (b) on the primary carer of that child of an EEA national where requiring the primary carer to leave the United Kingdom would prevent the child of an EEA national from continuing to be educated in the United Kingdom.

Paragraphs 4 and 9 of Schedule 1 to these Regulations also amend the 2006 Regulations in order to provide rights of entry and residence for the dependants of a primary carer where a refusal to confer such a right would prevent their primary carer from exercising his or her right of residence.

A number of other provisions of these Regulations make amendments to the 2006 Regulations which relate to the creation of the rights of entry and residence referred to above; in particular—

- (a) Paragraph 5 of Schedule 1 to these Regulations amends regulation 12 of the 2006 Regulations so as to allow a person to obtain an EEA family permit in order to facilitate the exercise of his or her right to enter;
- (b) Paragraph 11 of Schedule 1 to these Regulations inserts a new regulation 18A into the 2006 Regulations which will enable those exercising these rights of residence to obtain a document evidencing that fact; and
- (c) Paragraph 14 of Schedule 1 to these Regulations inserts a new regulation 21A into the 2006 Regulations which modifies the manner in which decisions under Part 4 of the 2006 Regulations (which relates to the exclusion and removal of, or the denial of documentation to, persons seeking to rely on rights of residence arising under the 2006 Regulations) are to be taken in relation to those persons who rely on the new rights of entry and residence referred to above.

Paragraphs 1, 2, 15, 16, 17, 18, 20, 22, 23, and 24 of Schedule 1 to these Regulations make more minor changes to provisions of the 2006 Regulations in light of the new rights of entry and residence which these Regulations have created and in order to reflect the documents which can be issued in recognition of these rights.

Paragraph 25 of Schedule 1 to these Regulations amends paragraph 6 of Schedule 4 to the 2006 Regulations in order to reflect the principles identified by the ECJ in the cases of C-162/09 *Secretary of State for Work and Pensions v Taous Lassal*, C-325/09 *Secretary of State for Work*



*and Pensions v Maria Dias*, and C-424/10 & C-425/10 *Tomasz Ziolkowski and Barbara Szeja and Others v Land Berlin*. The amendments ensure that activity or residence in the United Kingdom which was not pursuant to the 2006 Regulations will nonetheless count for the purpose of calculating periods of time under those Regulations (which, significantly, includes the period of five years residence after which a permanent right of residence will be acquired) where—

- (a) such activity or residence in the United Kingdom was, at the relevant time, in accordance with the Immigration (European Economic Area) Regulations 2000, the Immigration (European Economic Area) Order 1994, or the directives concerning Free Movement which pre-dated the entry into force of the 1994 Order; or
- (b) such activity or residence was carried out in the United Kingdom by the national of a country which has since acceded to the European Union and who at the relevant time had leave to enter or remain and would have been carrying out that activity or residing in the United Kingdom in accordance with the 2006 Regulations if they had been in force and applied to the person in question at the relevant time.

Paragraph 13 of Schedule 1 to these Regulations inserts a new regulation 20A into the 2006 Regulations. This new regulation enables the Secretary of State to cancel a person's right to reside in the United Kingdom on the grounds of public policy, public security or public health in circumstances in which it is not possible to make a decision to deny the person a document under regulation 20(1) or to remove the person pursuant to regulation 19(3)(b).

Paragraphs 6, 7 and 8 of Schedule 1 to these Regulations make amendments to the provisions of the 2006 Regulations (regulations 13, 14 and 15) which stipulate the circumstances in which a person will be entitled to reside in the United Kingdom. These amendments clarify that where a decision is taken to remove a person pursuant to 19(3)(b), or where a decision is made under regulation 20(1) to deny a person a document evidencing a right of residence, that decision deprives the person in question of the right to reside. Similar provision is made in respect of the cancellation decision created by new regulation 20A. Paragraph 10 of Schedule 1 to these Regulations, however, inserts new regulation 15B into the 2006 Regulations which deems the relevant right to reside to continue while an appeal against the decision which operates to deprive the person of the right to reside could be brought or is pending.

Paragraphs 19, 20 and 21 of Schedule 1 to these Regulations make amendments to the provisions of the 2006 Regulations governing the circumstances in which an appeal can be brought. These provisions include amendments which—

- (a) correct the definitions which delimit the circumstances in which an asylum or human rights issue raised by a person will permit them to appeal from within the United Kingdom in circumstances in which their right of appeal would ordinarily only be exercisable from overseas;
- (b) clarify the documents which must be produced in order to be able to appeal; and
- (c) prevent a person from bringing an in-country appeal against a decision to deny them a document where that decision has been taken whilst the person in question is outside the United Kingdom.

Paragraph 2 of Schedule 1 to these Regulations amends the definition of “student” in regulation 4(1)(d) of the 2006 Regulations so as to remove the reference to a register of Education and Training Providers. The definition is amended so that someone will meet this aspect of the definition if they are attending a public or private establishment which is financed from public funds or is otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing a course or training within the law or administrative practice of the part of the United Kingdom in which the establishment is located.

Paragraph 3 of Schedule 1 to these Regulations amends regulation 10 of the 2006 Regulations in order to make it clear that a family member of a person who has a permanent right of residence can retain a right of residence in certain circumstances.



Paragraph 1 of Schedule 1 to these Regulations makes various changes to the interpretation provisions in regulation 2(1) of the 2006 Regulations. These amendments include provisions which—

- (a) make it clear that a person will not be regarded as the spouse, civil partner or durable partner of another person for the purpose of the 2006 Regulations where a spouse, civil partner or durable partner of either person is already residing in the United Kingdom; and
- (b) make it clear that a person will not be regarded as an EEA national where they are also a United Kingdom national.

This amendment of the definition of an EEA national reflects the ECJ's judgment in the case of C-434/09 *Shirley McCarthy v Secretary of State for the Home Department*. Schedule 3 to these Regulations makes transitional provisions to address the position of persons who have acted in reliance on the previous definition.

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