
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) as amended (“the 2006 Regulations”) in order to amend the transposition in the United Kingdom of Directive [2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the rights 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](#)”). The Regulations also amend the way the United Kingdom gives effect to certain judgments of the Court of Justice of the European Union (“CJEU”), and address issues concerning the practical application of the 2006 Regulations.

These Regulations come into force on 1st January 2014, except for the provisions concerning “qualifying EEA State residence cards” (see paragraph 6 of Schedule 1), which come into force on 7th April 2014.

Paragraph 3 of Schedule 1 to the Regulations (“the Schedule”) amends regulation 6 of the Regulations in order to restrict the extent to which a person who is involuntarily unemployed may retain the status of “worker”. Where a person worked for more than 12 months before becoming involuntarily unemployed, worker status may be retained for up to six months while the person is seeking work and has genuine prospects of employment, and for longer if the person can provide compelling evidence that he or she continues to seek work and has a genuine chance of being engaged. The new regulation 6(2)(ba) and (2A) provides that a person who has worked for less than 12 months may only retain worker status for a maximum of six months. Changes are also made to the definition of “jobseeker” to clarify that a person may be a jobseeker both upon entering the UK, and where they have previously enjoyed a right to reside as a “qualified person” in another capacity. A person may only retain jobseeker status for more than 6 months if they are able to provide compelling evidence of seeking work and having a genuine chance of being engaged. These changes reflect the requirements of Article 7(3) of Directive [2004/38/EC](#).

Paragraph 4 of the Schedule inserts a new regulation 7B into the 2006 Regulations to provide for how residence by an accession State national previously subject to worker authorisation, as defined by the Accession (Immigration and Worker Authorisation) Regulations 2006 (S.I. 2006/3317) (“the EU2 Regulations”), should be treated for the purposes of calculating periods of residence under the 2006 Regulations.

Paragraph 5 of the Schedule replaces the existing regulation 9 of the 2006 Regulations to require a British citizen to have “transferred the centre of his or her life” to another member State in order to acquire a right of residence in the UK for his or her non-EEA family member seeking a right to reside in the UK upon their return. Factors relevant to whether the centre of a person's life has been transferred to another member State include the period of residence in that member State, the location of that person's principal residence, and the degree of integration. These changes are to ensure that a British citizen engages in genuine and effective use of the rights conferred by Directive [2004/38/EC](#) before a right to reside in the United Kingdom is conferred on a non-EEA family member.

Paragraph 6 of the Schedule amends regulation 11 of the 2006 Regulations to provide that a non-EEA national who presents a “qualifying EEA State residence card” may be admitted to the UK. A “qualifying EEA State residence card” is a residence card issued under Article 10 of Directive [2004/38/EC](#) by an EEA State listed in regulation 2 of the 2006 Regulations as amended by these Regulations, currently Germany and Estonia.

Paragraph 14(b) of the Schedule clarifies that the Secretary of State may revoke certain residence documentation where the person to whom it was issued never had a right to reside.

Changes to legislation: There are currently no known outstanding effects for the The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2013. (See end of Document for details)

Paragraph 16 inserts new regulation 20B into the 2006 Regulations. Where the Secretary of State has reasonable doubt about a person's right to reside under the 2006 Regulations, or wants to verify the identity of a person to apply for documentation under Part 3 of those regulations, the new regulation 20B allows that person, or a person connected to their right to reside (e.g. an EEA family member) to be invited for interview by the Secretary of State. Where that person, or a person connected to their right to reside, without good reason, fails to provide the requested information, or, on at least two occasions to attend an interview if so invited, the Secretary of State may decide that he or she is not entitled to a right to reside under the 2006 Regulations. The failure to attend an interview cannot be the sole basis for such a decision, nor should this provision be used in a systematic manner.

Paragraph 17 of the Schedule makes a minor amendment to regulation 21A of the 2006 Regulations, which governs the test to be applied when taking a decision under Part 4 of the 2006 Regulations (refusal of admission and removal etc) in relation to a person with a derivative right of residence. The quotation marks in regulation 21A(3)(a) of the 2006 Regulations surrounding “justified on grounds of public policy, public security or public health in accordance with regulation 21” are not required.

Paragraph 18 of the Schedule inserts a new regulation 21B in to the 2006 Regulations. This gives effect to Article 35 of Directive [2004/38/EC](#) which provides that member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by that Directive in the case of abuse of rights or fraud. The new regulation prevents people from evading the requirements for an extended right of residence under the 2006 Regulations, for example by attempting repeatedly to re-enter the United Kingdom in order to engage regulation 13 (initial right of residence). Where a person has been removed from the UK on one previous occasion in a 12 month period for not having a right to reside, the new regulation 21B allows that person to be refused admission if they cannot demonstrate that, upon re-entry, they will have a right to reside other than that provided by regulation 13. Where a person is involved in a marriage or civil partnership of convenience or other fraudulent activity, measures to terminate or refuse a right to reside may also be taken.

Paragraph 24 of the Schedule inserts a new regulation 28A into the 2006 Regulations which applies section 97A of the Nationality, Immigration and Asylum Act 2002 (c. 41) to EEA decisions made under the 2006 Regulations in certain national security cases. The new regulation 28A will apply where the Secretary of State has certified under regulation 28(2) – (4) of the 2006 Regulations that an EEA decision has been taken on national security grounds. Section 97A as applied by these Regulations will prevent an appeal from being brought against that decision from within the United Kingdom, if the Secretary of State has certified that the removal of that person pending the appeal would not breach the United Kingdom's obligations under the European Convention on Human Rights.

The remainder of these Regulations 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.

Changes to legislation:

There are currently no known outstanding effects for the The Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2013.