

2015 No. 694

IMMIGRATION

**The Immigration (European Economic Area) (Amendment)
Regulations 2015**

<i>Made</i>	- - - -	<i>12th March 2015</i>
<i>Laid before Parliament</i>		<i>16th March 2015</i>
<i>Coming into force</i>	- -	<i>6th April 2015</i>

The Secretary of State, being a Minister designated(a) for the purposes 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) and section 4 of the European Union (Croatian Accession and Irish Protocol) Act 2013(d), makes the following Regulations.

Citation

1. These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2015.

Commencement

2. These Regulations come into force on 6th April 2015.

Interpretation

3. In these Regulations—

“the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006(e);

“the 2013 Regulations” means the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013(f);

“EEA decision” has the meaning given in regulation 2(1) of the 2006 Regulations.

(a) S.I. 2000/1813.

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) 2002 c. 41; section 109 was amended by S.I. 2011/1043.

(d) 2013 c. 5.

(e) S.I. 2006/1003; amended by S.I. 2006/3317, 2009/1117, 2010/21, 2011/1247, 2012/1547, 2560, 2013/1460, 3032, 2014/1976; there are other amending instruments but none is relevant.

(f) S.I. 2013/1460, amended by S.I. 2014/530.

Amendments to the 2006 Regulations

4. The 2006 Regulations are amended as set out in Schedule 1 to these Regulations.

Amendments to the 2013 Regulations

5. The 2013 Regulations are amended as set out in Schedule 2 to these Regulations.

Transitional provision

6. The amendments to the 2006 Regulations made by paragraphs 11, 12, 13(c)(ii) and (iii) and (d), 15 and 16 of Schedule 1 have no effect in relation to an appeal against an EEA decision where that decision was taken before 6th April 2015.

Home Office
12th March 2015

James Brokenshire
Minister of State

SCHEDULE 1

Regulation 4

Amendments to the 2006 Regulations

Regulation 2 (general interpretation)

1. In regulation 2(1)—

- (a) in the appropriate place, insert ““the 2014 Act” means the Immigration Act 2014(a);”;
- (b) in the definition of “qualifying EEA State residence card”—
 - (i) in sub-paragraph (a), for “a document” substitute “a valid document”; and
 - (ii) in sub-paragraph (b), for “Germany and Estonia” substitute “any EEA State, except Switzerland”.

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

2. In regulation 4—

- (a) in paragraph (2), after “(1)(c)”, insert “ or (d)”;
- (b) omit paragraph (3);
- (c) in paragraph (4), for “paragraphs (2) and (3)” substitute “paragraph (2)”.

Regulation 11 (right of admission to the United Kingdom)

3. In regulation 11(8), after “(2)” insert “and 23A”.

Regulation 13 (initial right of residence)

4. In regulation 13(4)—

- (a) after “Secretary of State”, insert “or an immigration officer”;
- (b) in sub-paragraph (a), for “ or 20A(1)” substitute “, 20A(1) or 23A”.

Regulation 14 (extended right of residence)

5. In regulation 14(5)—

- (a) after “Secretary of State”, insert “or an immigration officer”;
- (b) in sub-paragraph (a), for “ or 20A(1)” substitute “, 20A(1) or 23A”.

Regulation 15 (permanent right of residence)

6. In regulation 15(3)—

- (a) after “Secretary of State”, insert “or an immigration officer”;
- (b) in sub-paragraph (a), for “ or 20A(1)” substitute “, 20A(1) or 23A”.

Regulation 15A (derivative right of residence)

7. In regulation 15A(9)—

- (a) after “Secretary of State”, insert “or an immigration officer”;
- (b) in sub-paragraph (a), for “ or 20A(1)” substitute “, 20A(1) or 23A”.

(a) 2014 c. 22.

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

8. In regulation 20(1A)—

- (a) after “regulation 19(3)”, insert “or 24(4)”;
- (b) after “United Kingdom”, insert “, or a decision under regulation 23A to revoke a person’s admission to the United Kingdom,”.

New regulation 23A (revocation of admission)

9. After regulation 23, insert—

“Revocation of admission

23A.—(1) This regulation applies to a person admitted to the United Kingdom under regulation 11 in circumstances where, pursuant to regulation 19(1) (exclusion justified on grounds of public policy, public security or public health), (1A) (person subject to deportation order or exclusion order) or (1AB) (reasonable grounds to suspect that admission would lead to the abuse of a right to reside), that person was not entitled to be admitted.

(2) Paragraph 6(2) of Schedule 2 to the 1971 Act(a) (administrative provisions as to control on entry: refusal of leave to enter) applies to a person to whom this regulation applies, as though the references—

- (a) to that person’s examination under paragraph 2 of Schedule 2 to the 1971 Act(b) were to that paragraph as applied by regulation 22(2)(a) and (c) of these Regulations;
- (b) to notices of leave to enter the United Kingdom were to a decision to admit that person to the United Kingdom under these Regulations;
- (c) to the cancellation of such a notice and the refusal of leave to enter were to revocation of the decision to admit that person to the United Kingdom under this regulation.

(3) Where a person’s admission to the United Kingdom is revoked, that person is to be treated as a person to whom admission to the United Kingdom has been refused and regulation 23 applies accordingly.”.

Regulation 24 (person subject to removal)

10. In regulation 24, in paragraph (4), after “exclusion order” insert “, or in circumstances where that person was not entitled to be admitted pursuant to regulation 19(1) or (1AB),”.

Regulation 25 (interpretation of Part 6 of the 2006 Regulations)

11. In regulation 25(1), omit the definitions of “Asylum claim” and “Human rights claim”.

Regulation 26 (appeal rights)

12. In regulation 26, after paragraph (7), insert—

“(8) For the avoidance of doubt, nothing in this Part prevents a person who enjoys a right of appeal under this regulation from appealing to the First-tier Tribunal under section 82(1)

(a) 1971 c. 77; paragraph 6(2) of Schedule 2 was amended by paragraph 7(1) of the Schedule to the Immigration Act 1988 (c. 14).

(b) Paragraph 2 of Schedule 2 was amended by paragraph 2 of Schedule 4 to the British Nationality Act 1981 (c. 61); paragraph 56 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33); and by S.I. 1993/1813.

of the 2002 Act^(a) (right of appeal to the Tribunal), or, where relevant, to the Commission pursuant to section 2 of the Special Immigration Appeals Act 1997^(b) (jurisdiction of the Commission: appeals), provided the criteria for bringing such an appeal under those Acts are met.”.

Regulation 27 (out of country appeals)

13. In regulation 27—

- (a) after paragraph (1)(a), insert—
 - “(zaa) to revoke his admission to the United Kingdom;”;
- (b) in paragraph (1)(d), after “exclusion order” insert “, or in circumstances where that person was not entitled to be admitted pursuant to regulation 19(1) or (1AB)”;
- (c) in paragraph (2)—
 - (i) for “(1)(a) and (aa)” substitute “(1)(a) to (aa)”;
 - (ii) after sub-paragraph (a), insert “or”;
 - (iii) in sub-paragraph (b), at the end, for “;” substitute “.”; and
- (d) omit paragraphs (2)(c) (asylum or human rights claim made in the United Kingdom) and (3) (certain appeals raising asylum and human rights claims may be brought from within the United Kingdom).

Regulation 29 (effect of appeals to the First-tier Tribunal or Upper Tribunal)

14. In regulation 29, in paragraph (4), after “admit him”, insert “, or a decision to revoke his admission,”.

Schedule 1 (Appeals to the First-tier Tribunal)

15. In paragraph 1 of Schedule 1, for “against an immigration decision under section 82(1) of that Act” to “sections 85 to 87;” substitute—

“against a decision of the Secretary of State under section 82(1) of the 2002 Act^(c) (right of appeal to the Tribunal)—”

section 84^(d) (grounds of appeal), as though the sole permitted ground of appeal were that the decision breaches the appellant’s rights under the EU Treaties in respect of entry to or residence in the United Kingdom (“an EU ground of appeal”);

section 85^(e) (matters to be considered), as though—

- (i) the references to a statement under section 120^(f) of the 2002 Act include, but are not limited to, a statement under that section as applied by paragraph 4 of Schedule 2 to these Regulations; and

(a) Section 82(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) was amended by section 15(2) of the Immigration Act 2014.

(b) 1997 c. 68; section 2 was amended by Schedule 7 to the Nationality, Immigration and Asylum Act 2002, paragraph 14 of Schedule 1 to the Immigration, Asylum and Nationality Act 2006 (c. 13), and paragraphs 2 and 26 of Schedule 9 to the Immigration Act 2014.

(c) Section 82 of the Nationality, Immigration and Asylum Act 2002 was amended by section 15(2) of the Immigration Act 2014.

(d) Section 84 of the Nationality, Immigration and Asylum Act 2002 was amended by section 15(4) of the Immigration Act 2014.

(e) Section 85 of the Nationality, Immigration and Asylum Act 2002 was amended by section 15(5) of, and paragraph 34 of Schedule 9 to, the Immigration Act 2014.

(f) Section 120 of the Nationality, Immigration and Asylum Act 2002 was amended by paragraph 55 of Schedule 9 to the Immigration Act 2014.

- (ii) a “matter” in subsection (2) and a “new matter” in subsection (6) include a ground of appeal of a kind listed in section 84 of the 2002 Act and an EU ground of appeal;
section 86(a) (determination of appeal);”.

Schedule 2 (effect on other legislation)

16. In Schedule 2, in paragraph 4 (appeals under the Nationality, Immigration and Asylum Act 2002 and previous immigration Acts)—

- (a) omit sub-paragraphs (1) to (7) and (9);
- (b) for sub-paragraph (8), substitute—

“(8) Section 120 of the 2002 Act applies to a person (“P”) if an EEA decision has been taken or may be taken in respect of P and, accordingly, the Secretary of State or an immigration officer may by notice require a statement from P under subsection (2) of that section, and that notice has effect for the purpose of section 96(2) of the 2002 Act**(b)**.

(9) Where section 120 of the 2002 Act so applies, it has effect as though—

- (a) subsection (3) also provides that a statement under subsection (2) need not repeat reasons or grounds relating to the EEA decision under challenge previously advanced by P; and
- (c) subsection (5) also applies where P does not have a right to reside in the United Kingdom under these Regulations, or only has such a right to reside by virtue of regulation 15B of these Regulations (continuation of a right of residence).

(10) For the purposes of an appeal brought pursuant to section 82(1) of the 2002 Act, subsections (2) and (6)(a) of section 85 (matters to be considered) have effect as though section 84 included a ground of appeal that the decision appealed against breaches the appellant’s rights under the EU Treaties in respect of entry to or residence in the United Kingdom.”.

(a) Section 86 of the Nationality, Immigration and Asylum Act 2002 was amended by paragraph 18(1)(b) of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), and paragraph 36 of Schedule 9 to the Immigration Act 2014.

(b) Section 96(2) was amended by paragraph 41(3) of Schedule 9 to the Immigration Act 2014.

SCHEDULE 2

Regulation 5

Amendments to the 2013 Regulations

Regulation 1 (citation, commencement, interpretation and consequential amendments)

1. In regulation 1(2)—

- (a) in the definition of “immigration rules”, for “on 1st July 2013” substitute
“—
 - (a) for the purposes of regulation 3(1)(a) (highly skilled person: Tier 1 (Exceptional Talent) migrant), on 6th November 2014; and
 - (b) for all other purposes, on 1st July 2013”;
- (b) in the definition of “relevant statement”, for “April 2014” substitute “March 2015(a)”;
and
- (c) in the appropriate place, insert—
““Student Union Sabbatical Officer” and “national National Union of Students (NUS) position” have the same meaning as in paragraph 245ZW of the immigration rules;”.

Regulation 2 (“Accession State national subject to worker authorisation”)

2. In regulation 2(17)—

- (a) after sub-paragraph (a), omit “or”;
- (b) after “vacation”, insert—
“; or
- (c) he works for no more than 2 years as a Student Union Sabbatical Officer, provided the appointment to the post is by election and the post is—
 - (i) either at the institution at which the Croatian national is enrolled as a student;
or
 - (ii) a national National Union of Students (NUS) position”.

(a) The relevant statement is published by the Home Office at <https://www.gov.uk/government/publications/croatian-nationals-who-want-to-work-in-the-uk-requirements> and copies can also be obtained through the Direct Communications Unit, Home Office, 2 Marsham Street, London SW1P 4DF (email: public.enquiries@homeoffice.gsi.gov.uk).

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”) and the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (S.I. 2013/1460), as amended (“the 2013 Regulations”). These Regulations come into force on 6th April 2015.

The amendments to the 2006 Regulations are contained in Schedule 1. They amend the transposition in the United Kingdom of Directive 2004/38/EC of the European Parliament and 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 (OJ No. L 158, 30.4.04, p77). Paragraphs 1(a), 11, 12, 13(c)(ii) and (iii) and (d), 15 and 16 of Schedule 1 bring the legal framework within which appeals may be brought against a decision taken under the 2006 Regulations (“an EEA decision”) into line with the regime established by the Immigration Act 2014 (c. 22) (“the 2014 Act”), which comes into force for all purposes on 6th April 2015.

The appellate regime established by the 2006 Regulations applies certain provisions of Part 5 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (“the 2002 Act”) to appeals against EEA decisions. Part 5 of the 2002 Act contains the legal framework for immigration appeals. The 2014 Act substantially amended the appellate regime contained in the 2002 Act, with the effect that many of the provisions of that Act formerly applied by the 2006 Regulations to appeals against EEA decisions either no longer exist, or exist in a different form. The 2014 Act restructured the rights of appeal to the Tribunal, with the effect that it is now only possible to appeal under that Act against the refusal of a human rights claim, a protection claim (humanitarian protection and asylum) and revocation of refugee or humanitarian protection status (“the tripartite grounds”). In particular, the concept of an appeal against an “immigration decision”, upon which appeals against EEA decisions were previously based by the 2006 Regulations, no longer exists.

Accordingly, paragraph 15 of Schedule 1 amends paragraph 1 of Schedule 1 to the 2006 Regulations to apply the relevant provisions of the 2002 Act, as amended by the 2014 Act, to appeals against an EEA decision, as though the sole permitted ground of appeal were that the decision breaches the appellant’s rights under the EU Treaties.

Paragraph 16 of the Schedule amends paragraph 4 of Schedule 2 to the 2006 Regulations to clarify the manner in which a notice issued under section 120 of the 2002 Act applies to an appeal under those Regulations. The Secretary of State or an immigration officer may serve a notice under section 120 of the 2002 Act, as applied by the 2006 Regulations, on a person if an EEA decision has been, or may be, taken in respect of that person. Once served with such a notice, that person must provide a Statement to the Secretary of State of their reasons and grounds for being permitted to enter, remain in, or not to be removed from, the United Kingdom. Such grounds may include one of the tripartite grounds of appeal introduced to the 2002 Act by the 2014 Act.

A new paragraph (10) is inserted into paragraph 4 of Schedule 2 to the 2006 Regulations to permit an EU ground of appeal to be raised within the context of an appeal brought under the 2002 Act, either in response to a notice given under section 120 of that Act, or, with the consent of the Secretary of State, as “a new matter” for the purposes of section 85(6) of the 2002 Act.

Paragraph 12 of Schedule 1 amends the 2006 Regulations to clarify that a person who enjoys a right of appeal under the 2006 Regulations is not prevented from pursuing a separate appeal to the Tribunal under the amended 2002 Act, provided the criteria for doing so contained in that Act are met.

Regulation 6 of the Regulations provides that the above changes are of no effect in relation to an appeal against an EEA decision taken before 6th April 2015.

Changes are also made in relation to the enforcement powers contained in the 2006 Regulations. Paragraph 9 of Schedule 1 applies, with certain modifications, paragraph 6(2) of Schedule 2 to the Immigration Act 1971 (“the 1971 Act”) to a decision to admit a person to the United Kingdom under the 2006 Regulations. Paragraph 6(2) of the 1971 Act allows an immigration officer to

cancel a notice giving leave to enter the United Kingdom within 24 hours of that notice being given. The application of paragraph 6(2) to EEA decisions by the 2006 Regulations allows a decision to admit a person to the United Kingdom to be revoked within 24 hours of that person's admission, provided the conditions for refusing admission to the United Kingdom are met.

Paragraph 10 of Schedule 1 amends regulation 24(4) of the 2006 Regulations to enable certain persons who enter the United Kingdom in circumstances where they were not entitled to be admitted (for example, clandestine entry by a person not entitled to be admitted pursuant to regulation 19(1)) to be treated as an illegal entrant for the purposes of Schedule 2 to the 1971 Act. In contrast to the powers enjoyed by immigration officers under paragraph 6(2) of Schedule 2 to the 1971 Act as applied by these Regulations, this power may additionally be exercised by the Secretary of State, and may apply to a person resident in the United Kingdom.

Paragraph 1(b) of Schedule 1 amends the definition of "qualifying EEA State residence card" to encompass cards issued by any EEA State, as defined, not including Switzerland. This is to implement the judgment of the Court of Justice of the European Union in Case C-202/13 *McCarthy and Others* (ECLI:EU:C:2014:2450).

Paragraph 2 of Schedule 1 clarifies that the family members of a student must also have comprehensive sickness insurance in order to enjoy a right to reside in the United Kingdom with the student.

Schedule 2 to the Regulations amends the 2013 Regulations to ensure that Croatian nationals subject to the worker authorisation scheme established by those Regulations benefit from certain changes to the immigration rules enjoyed by third country nationals. The statements of changes to the immigration rules laid before Parliament on 13th March 2014 (HC 1138) and 16th October 2014 (HC 693) permit those seeking leave to enter or remain as Tier 1 (Exceptional Talent) migrants to be endorsed by a wider range of competent bodies for the purposes of the Points Based System contained in those rules. These changes extend the benefit of those changes to those seeking a right to reside under the 2013 Regulations.

Paragraph 2 of Schedule 2 amends regulation 2(17) of the 2013 Regulations to ensure that Croatian students enjoy the same ability to work as student union sabbatical officers as Tier 4 migrants under the immigration rules. Further amendments to regulation 2(1) of the 2013 Regulations reflect minor changes made to the statement of relevant requirements to which Croatian nationals seeking worker authorisation are subject.

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.

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