
STATUTORY INSTRUMENTS

2017 No. 1

IMMIGRATION

The Immigration (European Economic Area) (Amendment) Regulations 2017

<i>Made</i>	- - - -	<i>5th January 2017</i>
<i>Laid before Parliament</i>		<i>10th January 2017</i>
<i>Coming into force</i>	- -	<i>31st January 2017</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ 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⁽³⁾, makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2017.

(2) They come into force on 31st January 2017.

Amendments to the Immigration (European Economic Area) Regulations 2016

2. The Immigration (European Economic Area) Regulations 2016⁽⁴⁾ are amended as set out in the Schedule.

5th January 2017

Robert Goodwill
Minister of State
Home Office

(1) S.I. 2000/1813.
(2) 1972 c. 68.
(3) 2002 c. 41.
(4) S.I. 2016/1052.

SCHEDULE

Regulation 2

Amendments to the Immigration (European Economic Area) Regulations 2016

Regulation 18 (issue of residence card)

1. In regulation 18(7)(a) for “an EEA national” substitute “a Union citizen”.

Regulation 21 (procedure for applications for documentation under this Part and regulation 12)

2. In regulation 21(2)(a) for “(4)” substitute “(5)”.

Regulation 24 (refusal to issue or renew and revocation of residence documentation)

3. In regulation 24(6) after “officer” insert “or an immigration officer”.

Schedule 4 (revocations and savings), new paragraph 3 (appeals)

4. After paragraph 2 of Schedule 4 insert—

“Appeals

3.—(1) Notwithstanding the revocation of the 2006 Regulations by paragraph 1(1), those Regulations continue to apply—

- (a) in respect of an appeal under those Regulations against an EEA decision which is pending (within the meaning of regulation 25(2) of the 2006 Regulations) on 31st January 2017;
- (b) in a case where a person has, on 31st January 2017, a right under those Regulations to appeal against an EEA decision.

(2) For the purposes of this paragraph, “EEA decision” has the meaning given in regulation 2 of the 2006 Regulations and the definition of “EEA decision” in regulation 2 of these Regulations does not apply.”

Schedule 6 (transitional provisions), new paragraph 9 (preservation of transitional provisions in relation to family members of dual nationals)

5. After paragraph 8 of Schedule 6 insert—

“Preservation of transitional provisions in relation to family members of dual nationals

9.—(1) Where—

- (a) the right of a family member (“F”) to be admitted to, or reside in, the United Kingdom pursuant to these Regulations depends on a person (“P”) being an EEA national;
- (b) P would be an EEA national if P was not also a British citizen; and
- (c) any of the criteria in sub-paragraphs (2), (3) and (4) is met;

P will, notwithstanding the effect of the definition of an EEA national in regulation 2, be regarded as an EEA national for the purpose of these Regulations.

- (2) The criterion in this sub-paragraph is met where F was on 16th July 2012 a person with the right of permanent residence in the United Kingdom under the 2006 Regulations.
- (3) Subject to sub-paragraph (5), the criterion in this sub-paragraph is met where F—
- (a) was on 16th July 2012 a person with a right of residence in the United Kingdom under the 2006 Regulations; and
 - (b) on 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 of the 2006 Regulations could be brought while the appellant was 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⁽⁵⁾, as it applied on 16th July 2012).
- (4) Subject to sub-paragraph (6), the criterion in this sub-paragraph is met where F—
- (a) had, prior to 16th July 2012, applied for an EEA family permit pursuant to regulation 12 of the 2006 Regulations; or
 - (b) had applied for and been refused an EEA family permit and where, on 16th July 2012, an appeal under regulation 26 of the 2006 Regulations 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 Nationality, Immigration and Asylum Act 2002 Act, as it applied on 16th July 2012).
- (5) The criterion in sub-paragraph (3) is not met in a case to which sub-paragraph (3) (b)(ii) or (iii) applies where no registration certificate or residence card was, in fact, issued pursuant to that application.
- (6) The criterion in sub-paragraph (4) is not met where—
- (a) F was issued with an EEA family permit pursuant to an application made prior to 16th July 2012 but F had not been admitted to the United Kingdom within six months of the date on which it was issued; or
 - (b) no EEA family permit was, in fact, issued pursuant to that application.
- (7) Where met, the criteria in sub-paragraphs (2), (3) and (4) remain satisfied until the occurrence of the earliest of the following events—
- (a) the date on which F ceases to be the family member of P; or
 - (b) the date on which F's right of permanent residence is lost.
- (8) P will only continue to be regarded as an EEA national for the purpose of considering the position of F under these Regulations.”

(5) 2002 c.41; as of 16 July 2012, section 104 had been amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19), Schedule 2(1), paragraphs 20(a) and (b), and the Immigration, Asylum and Nationality Act 2006 (c.13), section 9 and S.I. 2010/21. Section 104 has since been further amended but those amendments are not material.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2016 ([S.I. 2016/1052](#), “the principal Regulations”).

Paragraph 1 of the Schedule amends regulation 18(7)(a) so that a residence card must be called “Residence card of a family member of a Union citizen” instead of “Residence card of a family member of an EEA national”.

Paragraph 2 of the Schedule corrects an incorrect cross-reference in regulation 21(2)(a).

Paragraph 3 of the Schedule amends regulation 24(6) to ensure that immigration officers can revoke EEA family permits. This reflects the wording contained in the corresponding provision of the Immigration (European Economic Area) Regulations 2006 ([S.I. 2006/1003](#) “the 2006 Regulations”), which will be revoked by the principal Regulations on 1st February 2017.

Paragraph 4 of the Schedule inserts a new savings provision in paragraph 3 into Schedule 4 to make it clear that the principal Regulations do not affect an appeal against, or a person’s right to appeal against, an EEA decision made under the 2006 Regulations.

Paragraph 5 of the Schedule inserts a new transitional provision in paragraph 9 into Schedule 6. This largely reflects transitional provision made by paragraph 2 of Schedule 3 to the Immigration (European Economic Area) (Amendment) Regulations 2012 ([S.I. 2012/1547](#), “the 2012 Regulations”), which addressed the position of persons who acted in reliance on the definition of an “EEA national” in the 2006 Regulations prior to the amendment of that definition by the 2012 Regulations. However, there is a variation to take account of the fact that: (i) any application for documentation that brings a family member within the scope of new paragraph 9 will now have been finally determined and therefore it is no longer necessary to preserve the application of the transitional provision for those who have outstanding appeal rights; and (ii) any EEA family permit issued following an application that brings a family member within the scope of new paragraph 9 would have been issued more than 6 months ago and therefore it is no longer necessary to preserve the application of the transitional provision for those who are yet to use their EEA family permit.

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