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 (OJNo. 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.

Changes to legislation:
There are currently no known outstanding effects for the The Immigration (European Economic Area) (Amendment) Regulations 2015.