

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.

Status: This is the original version (as it was originally made).

- (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⁽¹⁾, 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.”

⁽¹⁾ 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.