

2019 No. 1155

IMMIGRATION

**The Immigration (European Economic Area) (Amendment)
Regulations 2019**

<i>Made</i>	- - - -	<i>22nd July 2019</i>
<i>Laid before Parliament</i>		<i>23rd July 2019</i>
<i>Coming into force on</i>	-	<i>15th August 2019</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 those conferred by section 109 of the Nationality, Immigration and Asylum Act 2002(c), makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2019 and come into force on 15th August 2019.

Amendments to the Immigration (European Economic Area) Regulations 2016

2.—(1) The Immigration (European Economic Area) Regulations 2016(d) are amended as follows.

- (2) In regulation 2(1) (general interpretation), in the definition of “EEA decision”—
- (a) in sub-paragraph (b)—
 - (i) after “or not to have revoked,”, insert “an EEA family permit.”;
 - (ii) for “a decision that an application for the above documentation is invalid”, substitute “a decision to reject an application for the above documentation as invalid”;
 - (b) in the words after sub-paragraph (d), for “reject” substitute “refuse”.
- (3) In regulation 5 (meaning of “worker or self-employed person who has ceased activity”)—
- (a) in paragraph (3)(a), after “continuously for more than two years” insert “immediately”;
 - (b) in paragraph (4)(b), at the start, insert “immediately”.
- (4) In regulation 7(3)(a) (meaning of “family member”) after “regulation” insert “8(1A).”.

(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 section 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) S.I. 2016/1052. Amended by S.I. 2017/1, 2017/1242, 2018/801 and 2019/468.

- (5) In regulation 8 (meaning of “extended family member”)—
- (a) in paragraph (1), after “paragraph” insert “(1A),”;
 - (b) after paragraph (1) insert—
 - “(1A) The condition in this paragraph is that the person—
 - (a) is under the age of 18;
 - (b) is subject to a non-adoptive legal guardianship order in favour of an EEA national that is recognised under the national law of the state in which it was contracted;
 - (c) has lived with the EEA national since their placement under the guardianship order;
 - (d) has created family life with the EEA national; and
 - (e) has a personal relationship with the EEA national that involves dependency on the EEA national and the assumption of parental responsibility, including legal and financial responsibilities, for that person by the EEA national.”;
 - (c) in paragraph (3), after “personal care of the EEA national” insert “or the spouse or civil partner of the EEA national”;
 - (d) in paragraph (5), after “an EEA national,” insert “or the child (under the age of 18) of that partner”;
 - (e) in paragraph (7)—
 - (i) for “paragraphs (2) and (3)” substitute “paragraphs (2), (3) and (4)”;
 - (ii) omit the words from and including “where on the basis of being” until the end of the paragraph;
 - (f) after paragraph (7) insert—
 - “(8) Where an extensive examination of the personal circumstances of the applicant is required under these Regulations, it must include examination of the following—
 - (a) the best interests of the applicant, particularly where the applicant is a child;
 - (b) the character and conduct of the applicant; and
 - (c) whether an EEA national would be deterred from exercising their free movement rights if the application was refused.”.
- (6) In regulation 9(2) (family members and extended family members of British citizens)—
- (a) for sub-paragraph (d) substitute—
 - “(d) either—
 - (i) F was a family member of BC during all or part of their joint residence in the EEA State;
 - (ii) F was an EFM of BC during all or part of their joint residence in the EEA State, during which time F was lawfully resident in the EEA State; or
 - (iii) EFM was an EFM of BC during all or part of their joint residence in the EEA State, during which time EFM was lawfully resident in the EEA State;”;
 - (b) in sub-paragraph (e), at the end insert “and”;
 - (c) after sub-paragraph (e), insert—
 - “(f) the conditions in sub-paragraphs (a), (b) and (c) have been met concurrently.”.
- (7) In regulation 10(5) (meaning of “family member who has retained the right of residence”), for “termination” substitute “initiation of proceedings for the termination”.
- (8) In regulation 21(4) (procedure for applications for documentation under this Part and regulation 12), at the end, insert “and must be rejected”.
- (9) In regulation 36 (appeal rights)—
- (a) in paragraph (4)(b)—
 - (i) in paragraph (iii)—

- (aa) for “proof that the criteria in regulation 7 are met” substitute “proof that the definition of “family member” in regulation 7(1) is met”;
- (bb) omit “or”;
- (ii) in paragraph (iv), for “proof that the criteria in regulation 10 are met” substitute “proof that the definition of “family member who has retained the right of residence” in regulation 10(1) is met; or”;
- (iii) after paragraph (iv), insert—
 - “(v) in the case of a person claiming to be the relative of an EEA national who is an extended family member, proof that the definition of “extended family member” in regulation 8(1) is met.”;
- (b) in paragraph (6)(c)—
 - (i) omit paragraph (i);
 - (ii) in paragraph (ii)(bb), for “a family member” substitute “an extended family member”.

Caroline Nokes
Minister of State
Home Office

22nd July 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”) giving effect to the judgment of the Court of Justice of the European Union (“CJEU”) in the case of *C-129/18 SM v Entry Clearance Officer, UK Visa Section*, and addressing issues concerning the practical application of the 2016 Regulations.

Regulation 2(2) amends regulation 2 of the 2016 Regulations to bring a decision to grant an EEA family permit within the definition of ‘EEA decision’. It also clarifies that applications rejected as invalid will not fall within the definition.

Regulation 2(3) amends regulation 5 of the 2016 Regulations to make it clear that workers and self-employed persons who have ceased activity due a permanent incapacity to work, or who are now active abroad, must have lived in the UK continuously immediately prior to, respectively, becoming permanently incapacitated or taking up work or self-employment abroad.

Regulation 2(4) and 2(5) makes provision for the judgment in *C-129/18 SM v Entry Clearance Officer, UK Visa Section* by amending regulation 8 of the 2016 Regulations in two ways: firstly by making it clear that the category of extended family member can include relatives of an EEA national’s spouse or civil partner; and secondly by setting out the conditions under which a child placed in a system of non-adoptive legal guardianship can be an extended family member for the purpose of the 2016 Regulations. It also sets out the criteria to be considered when performing an extensive examination of an applicant’s circumstances, as envisaged by the CJEU.

Regulation 2(6) amends the application of regulation 9 of the 2016 Regulations to ensure that the family member of an EEA national can rely upon time spent as an extended family member of that EEA national in another EEA State when making an application under regulation 9, as long as the family member was legally resident as an extended family member in the other EEA State.

Regulation 2(7) amends regulation 10 of the 2016 Regulations to give effect to the judgment in *Baigazieva v SSHD* [2018] EWCA Civ 1088 by making it clear that, in the case of family members who have retained the right of residence, a family member who was previously married

to, or the civil partner of, an EEA national need only demonstrate that that EEA national was a qualified person until the time immediately prior to the initiation of proceedings for the termination of the marriage or the civil partnership.

Regulation 2(8) clarifies regulation 21(4) of the 2016 Regulations by setting out that invalid applications must be rejected, rather than refused. Regulation 2(2)(a)(ii) makes a connected amendment to the definition of “EEA decision”.

Regulation 2(9) makes amendments to regulation 36 of the 2016 Regulations in order to clarify the operation of the right of appeal for extended family members that was reintroduced by the Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019. This ensures that extended family members are able to exercise their right of appeal where they meet the relevant definition at regulation 8 of the 2016 Regulations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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