

2012 No. 2560

IMMIGRATION

**The Immigration (European Economic Area) (Amendment)
(No. 2) Regulations 2012**

<i>Made</i>	- - - -	<i>11th October 2012</i>
<i>Laid before Parliament</i>		<i>17th October 2012</i>
<i>Coming into force</i>	- -	<i>8th November 2012</i>

The Secretary of State, being a Minister designated(a) for the purpose 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), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012 and shall come into force on 8th November 2012.

Amendment of the Immigration (European Economic Area) Regulations 2006

2. The Immigration (European Economic Area) Regulations 2006(d) are amended as set out in the Schedule.

Home Office
11th October 2012

Mark Harper
Minister of State

(a) S.I. 2000/1813.
(b) 1972 c.68; section 2(2) has been amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by paragraph 1 of Schedule 1(1) to the European Union (Amendment) Act 2008 (c.7).
(c) 2002 c.41; section 109 has been amended by article 6(1)(a) of S.I. 2011/1043.
(d) S.I. 2006/1003; relevant amending instruments are S.I. 2006/3317, 2007/3224, 2009/1117, 2010/21, 708, 1593, S.I. 2011/544, 2011/1247 and S.I. 2012/1547.

Amendments to the Immigration (European Economic Area)
Regulations 2006

Regulation 8 (“Extended family member”)

1. In regulation 8(2)(a) omit the words “in which the EEA national also resides”.

Regulation 11 (right of admission to the United Kingdom)

2. In regulation 11—
 - (a) at the end of paragraph (5)(c)(ii) for “United Kingdom.” substitute “United Kingdom.”;
 - (b) at the end of paragraph (5)(d)(ii) for “person there.” substitute “person there; or” and then insert—

“(e) P is accompanying a British citizen to, or joining a British citizen in, the United Kingdom and P would be entitled to reside in the United Kingdom pursuant to regulation 15A(4A) were P and the British citizen both in the United Kingdom.”;
 - (c) in paragraphs (6)(a) and (7) for “paragraph (5)(b) or (c)” substitute “paragraph (5)(b), (c) or (e)”;
 - (d) in paragraph (7)(b) for “regulation 15A(2) or (4)” substitute “regulation 15A(2), (4) or (4A)”.

Regulation 15A (derivative right of residence)

3. In regulation 15A—
 - (a) in paragraph (1)—
 - (i) for the words “entitled to reside in the United Kingdom as a result of any other provision of these Regulations” substitute “an exempt person”;
 - (ii) after “paragraph (2), (3), (4)” insert “, (4A)”;
 - (b) after paragraph (4) insert—

“(4A) P satisfies the criteria in this paragraph if—

 - (a) P is the primary carer of a British citizen (“the relevant British citizen”);
 - (b) the relevant British citizen is residing in the United Kingdom; and
 - (c) the relevant British citizen would be unable to reside in the UK or in another EEA State if P were required to leave.”;
 - (c) in paragraph (6)—
 - (i) at the end of subparagraph (a) delete the word “and”;
 - (ii) at the end of subparagraph (b) for “regulation 6(2).” substitute “regulation 6(2); and”;
 - (iii) “(c) “an exempt person” is a person—
 - (i) who has a right to reside in the United Kingdom as a result of any other provision of these Regulations;
 - (ii) who has a right of abode in the United Kingdom by virtue of section 2 of the 1971 Act;
 - (iii) to whom section 8 of the 1971 Act, or any order made under subsection (2) of that provision, applies; or
 - (iv) who has indefinite leave to enter or remain in the United Kingdom.”;
- (d) for paragraph (7)(b)(ii) substitute—

- “(ii) shares equally the responsibility for that person’s care with one other person who is not an exempt person.”;
- (e) after paragraph (7) insert—
 - “(7A) Where P is to be regarded as a primary carer of another person by virtue of paragraph (7)(b)(ii) the criteria in paragraphs (2)(b)(iii), (4)(b) and (4A)(c) shall be considered on the basis that both P and the person with whom care responsibility is shared would be required to leave the United Kingdom.
 - (7B) Paragraph (7A) does not apply if the person with whom care responsibility is shared acquired a derivative right to reside in the United Kingdom as a result of this regulation prior to P assuming equal care responsibility.”; and
- (f) in paragraph (9) after “paragraph (2), (3), (4)” insert “, (4A)”.

Regulation 21A (application of Part 4 to persons with a derivative right of residence)

- 4. In regulation 21A(2)(a) after “regulation 15A(2), (4)” insert “, (4A)”.

Regulation 26 (appeal rights)

- 5. In regulation 26—
 - (a) after paragraph (2) insert—
 - “(2A) If a person claims to be in a durable relationship with an EEA national he may not appeal under these Regulations unless he produces—
 - (a) a passport; and
 - (b) either—
 - (i) an EEA family permit; or
 - (ii) sufficient evidence to satisfy the Secretary of State that he is in a relationship with that EEA national.”;
 - (b) in paragraph (3) after “If a person” insert “to whom paragraph (2) does not apply”;
 - (c) in paragraph (3)(a) omit “a valid national identity card issued by an EEA State or”;
 - (d) in paragraph (3A) after “right of” insert “entry or”;
 - (e) in paragraph (3A)(b) for the references to “a derivative right of residence under” substitute “a derivative right of entry or residence as a result of”; and
 - (f) at the end of paragraph (3A)(b)(iv) for “(i) or (iii).” substitute “(i) or (iii);” and then insert—
 - “(v) where the person claims to have a derivative right of entry or residence as a result of regulation 15A(4A), he is a direct relative or guardian of a British citizen.”.

New regulation 29A (alternative evidence of identity and nationality)

- 6. Before regulation 30 insert—

“Alternative evidence of identity and nationality

29A.—(1) Subject to paragraph (2), where a provision of these Regulations requires a person to hold or produce a valid identity card issued by an EEA State or a valid passport the Secretary of State may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required document due to circumstances beyond his or her control.

- (2) This regulation does not apply to regulation 11.”

References to “United Kingdom national”

7.—(1) In regulation 2(1) delete the definition of “United Kingdom national”.

(2) For the references to “United Kingdom national” in regulations 2(1), 4(4)(a), 5(6) and 9 substitute references to “British citizen”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) in order to give effect to the judgments of the Court of Justice of the European Union (‘ECJ’) in the cases of C-83/11 *Secretary of State for the Home Department v Muhammad Sazzadur Rahman and Others* (‘Rahman’) and C-34/09 *Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm)* (‘Zambrano’) and to address a number of issues concerning the transposition of Directive 2004/38/EC and the practical application of the 2006 Regulations.

Paragraph 1 of the Schedule to these Regulations gives effect to the ECJ’s decision in *Rahman* by amending regulation 8(2)(a) so as to remove the stipulation that a person must have resided in a country other than the UK *with the EEA national* of whom they claim to be an extended family member.

Paragraphs 2 and 3 of the Schedule to these Regulations give effect to the ECJ’s decision in *Zambrano* by amending regulations 11 and 15A of the 2006 Regulations in order to confer rights of entry and residence on the primary carer of a British citizen who is residing in the United Kingdom and where the denial of such a right of residence would prevent the British citizen from being able to reside in the United Kingdom or in an EEA State. By virtue of regulation 2(1) of the 2006 Regulations an EEA State is defined as a member State of the European Union (other than the United Kingdom), Norway, Iceland, Liechtenstein or Switzerland.

Paragraph 4 of the Schedule to these Regulations amends regulation 21A of the 2006 Regulations in order to ensure that the provisions of Part 4 of the 2006 Regulations apply to the restriction of the rights of entry and residence flowing from regulation 15A(4A) in a modified form.

Paragraph 5 of the Schedule to these Regulations makes a number of changes to regulation 26 of the EEA Regulations, which specifies when a person may appeal under the EEA Regulations. Subparagraph (a) of paragraph 5 of the Schedule to these Regulations amends regulation 26 of the 2006 Regulations by inserting a new paragraph (2A) so as to ensure that someone who claims to be the durable partner of an EEA national may only appeal under the Regulations where he or she can provide evidence which is sufficient to satisfy the Secretary of State as to the existence of the relationship in question. Subparagraphs (b) and (c) amend regulation 26(3) of the 2006 Regulations in order to make it clear that this provision does not apply to EEA nationals. Subparagraphs (d) and (e) amend regulation 26(3A) of the 2006 Regulations in order to clarify that the stipulations which it contains concerning the exercise of appeal rights apply in relation to both persons claiming a derivative right to reside *and* persons claiming a derivative right to enter the United Kingdom. Subparagraph (f) of paragraph 5 amends regulation 26(3A) of the 2006 Regulations so as to stipulate the proof which someone claiming a right to enter or reside pursuant to regulation 15A(4A) must produce in order to be entitled to appeal against an EEA decision.

Paragraph 6 of the Schedule to these Regulations inserts a new regulation 29A into the 2006 Regulations which will make it clear that the Secretary of State may accept alternative evidence of identity and nationality where a person is unable to comply with a requirement of the 2006 Regulations concerning the holding or production of a valid national ID card or passport due to circumstances beyond his or her control.

Paragraph 7 of the Schedule to these Regulations amends the 2006 Regulations so that references to a United Kingdom national refer instead to a British citizen.

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

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STATUTORY INSTRUMENTS

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