

2013 No. 3032

IMMIGRATION

**The Immigration (European Economic Area) (Amendment)
(No. 2) Regulations 2013**

Made - - - - - *3rd December 2013*

Laid before Parliament *5th December 2013*

Coming into force in accordance with regulation 2

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 of the powers conferred by section 109 of the Nationality, Immigration and Asylum Act 2002(c), makes the following Regulations.

Citation

1. These Regulations may be cited as the Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2013.

Commencement

2.—(1) Except as provided by paragraph (2), these Regulations come into force on 1st January 2014.

(2) Paragraphs 1, 6(a) and (b), 19(a), 20(b), 22, 23 and 25(a) of Schedule 1 and paragraphs 1(b) and 2(c) of Schedule 2, come into force on 7th April 2014.

Interpretation

3. In these Regulations, “the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006(d).

Amendments to the 2006 Regulations

4. The 2006 Regulations are amended as set out in Schedule 1.

(a) S.I. 2000/1813.

(b) 1972 c. 68.

(c) 2002 c. 41.

(d) S.I. 2006/1003, as amended by S.I. 2006/3317, 2009/1117, 2010/21, 1593, 2011/544, 1247, 2012/1547, 1809, 2560 and 2013/1391 and 1460.

Consequential amendments

5. Schedule 2 has effect.

Transitional provisions

6. Schedule 3 has effect.

Home Office
3rd December 2013

Mark Harper
Minister of State

SCHEDULE 1

Regulation 4

Amendments to the 2006 Regulations

Regulation 2 (general interpretation)

1. In regulation 2(1), in the appropriate place, insert—

““a qualifying EEA State residence card” means—

- (a) a document called a “Residence card of a family member of a Union Citizen” issued under Article 10 of Council Directive 2004/38/EC^(a) (as applied, where relevant, by the EEA Agreement) by an EEA State listed in sub-paragraph (b) to a non-EEA family member of an EEA national as proof of the holder’s right of residence in that State;
- (b) Germany and Estonia;”.

Regulation 5 (“worker or self-employed person who has ceased activity”)

2. In regulation 5, in paragraph (7), for “regulation 7A(3)”, substitute “regulations 6(2), 7A(3) or 7B(3)”.

Regulation 6 (“Qualified person”)

3. In regulation 6—

- (a) in paragraph (2), for “regulation 7A(4)” substitute “regulations 7A(4) and 7B(4)”;
- (b) for paragraph (2)(b), substitute—
 - “(b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided that he—
 - (i) has registered as a jobseeker with the relevant employment office; and
 - (ii) satisfies conditions A and B;”;
- (c) after paragraph (2)(b), insert—
 - “(ba) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided that he—
 - (i) has registered as a jobseeker with the relevant employment office; and
 - (ii) satisfies conditions A and B;”;
- (d) after paragraph (2), insert—
 - “(2A) A person to whom paragraph (2)(ba) applies may only retain worker status for a maximum of six months.”;
- (e) for paragraph (4), substitute—
 - “(4) For the purpose of paragraph (1)(a), a “jobseeker” is a person who satisfies conditions A and B.
 - (5) Condition A is that the person—
 - (a) entered the United Kingdom in order to seek employment; or
 - (b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside pursuant to paragraph (1)(b) to (e) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (ba)).

(a) OJ No. L 158, 30.4.04, p77.

(6) Condition B is that the person can provide evidence that he is seeking employment and has a genuine chance of being engaged.

(7) A person may not retain the status of a worker pursuant to paragraph (2)(b), or jobseeker pursuant to paragraph (1)(a), for longer than six months unless he can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged.”.

New regulation 7B (application of the EU2 Regulations)

4. After regulation 7A, insert—

“7B. Application of the EU2 Regulations

(1) This regulation applies to an EEA national who was an accession State national subject to worker authorisation before 1st January 2014.

(2) In this regulation—

“accession State national subject to worker authorisation” has the same meaning as in regulation 2 of the EU2 Regulations;

“the EU2 Regulations” means the Accession (Immigration and Worker Authorisation) Regulations 2006(a).

(3) Regulation 2(12) of the EU2 Regulations (accession State national subject to worker authorisation: legally working) has effect for the purposes of this regulation as it does for regulation 2(3) and (4) of the EU2 Regulations.

(4) In regulation 5(7)(c), where the worker is an accession State national subject to worker authorisation, periods of involuntary unemployment duly recorded by the relevant employment office must only be treated as periods of activity as a worker when the unemployment began on or after 1st January 2014.

(5) Regulation 6(2) applies to an accession State national subject to worker authorisation where the accession State national subject to worker authorisation became unable to work, became unemployed or ceased to work, as the case may be, on or after 1st January 2014.

(6) For the purposes of regulation 15, an accession State national subject to worker authorisation must be treated as having resided in accordance with these Regulations during any period before 1st January 2014 in which the accession State national subject to worker authorisation was legally working in the United Kingdom.

(7) An accession worker card issued to an accession State national subject to worker authorisation under regulation 11 of the EU2 Regulations before 1st January 2014 must be treated as if it were a registration certificate issued under these Regulations so long as it has not expired.”.

Regulation 9 (family members of British citizens)

5. For regulation 9, substitute—

“Family members of British citizens

9.—(1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member of a British citizen as if the British citizen (“P”) were an EEA national.

(2) The conditions are that—

(a) P is residing in an EEA State as a worker or self-employed person or was so residing before returning to the United Kingdom;

(a) S.I. 2006/3317, as amended by S.I. 2007/475, 3012, 3224, 2009/2426, 2748, 2010/1836, 2011/2816 and 2012/1809.

- (b) if the family member of P is P's spouse or civil partner, the parties are living together in the EEA State or had entered into the marriage or civil partnership and were living together in the EEA State before the British citizen returned to the United Kingdom; and
 - (c) the centre of P's life has transferred to the EEA State where P resided as a worker or self-employed person.
- (3) Factors relevant to whether the centre of P's life has transferred to another EEA State include—
- (a) the period of residence in the EEA State as a worker or self-employed person;
 - (b) the location of P's principal residence;
 - (c) the degree of integration of P in the EEA State.
- (4) Where these Regulations apply to the family member of P, P is to be treated as holding a valid passport issued by an EEA State for the purpose of the application of regulation 13 to that family member.”.

Regulation 11 (right of admission to the United Kingdom)

6. In regulation 11—

(a) for paragraph (2) substitute—

“(2) A person who is not an EEA national must be admitted to the United Kingdom if he is—

- (a) a family member of an EEA national and produces on arrival a valid passport and a qualifying EEA State residence card, provided the conditions in regulation 19(2)(a) (non-EEA family member to be accompanying or joining EEA national in the United Kingdom) and (b) (EEA national must have a right to reside in the United Kingdom under these Regulations) are met; or
- (b) a family member of an EEA national, a family member who has retained the right of residence, a person who meets the criteria in paragraph (5) or a person with a permanent right of residence under regulation 15 and produces on arrival—
 - (i) a valid passport; and
 - (ii) an EEA family permit, a residence card, a derivative residence card or a permanent residence card.”;

(b) for paragraph (3) substitute—

“(3) An immigration officer must not place a stamp in the passport of a person admitted to the United Kingdom under this regulation who is not an EEA national if the person produces a residence card, a derivative residence card, a permanent residence card or a qualifying EEA State residence card.”;

(c) in paragraph (8), for “and (2)”, substitute “, (1AB) and (2)”.

Regulation 12 (issue of EEA family permit)

7. In regulation 12 (issue of EEA family permit), in paragraph (5), after “19(1A) or” insert “(1AB) or”.

Regulation 13 (initial right of residence)

8. In regulation 13, in paragraph (4), for “regulation 19(3)(b), 20(1) or 20A(1)” substitute—

“—

- (a) regulation 19(3)(b), 20(1) or 20A(1); or
- (b) regulation 21B(2), where that decision was taken in the preceding twelve months.”

Regulation 14 (extended right of residence)

9. In regulation 14, in paragraph (5), for “regulation 19(3)(b), 20(1) or 20A(1)” substitute—

“—

- (a) regulation 19(3)(b), 20(1) or 20A(1); or
- (b) regulation 21B(2) (not including such a decision taken on the basis of regulation 21B(1)(a) or (b)), where that decision was taken in the preceding twelve months.”.

Regulation 15 (permanent right of residence)

10. In regulation 15, in paragraph (3), for “regulation 19(3)(b), 20(1) or 20A(1)” substitute—

“—

- (a) regulation 19(3)(b), 20(1) or 20A(1); or
- (b) regulation 21B(2) (not including such a decision taken on the basis of regulation 21B(1)(a) or (b)), where that decision was taken in the preceding twelve months.”.

Regulation 15A (derivative right of residence)

11. In regulation 15A, in paragraph (9), for “regulation 19(3)(b), 20(1) or 20A(1)” substitute—

“—

- (a) regulation 19(3)(b), 20(1) or 20A(1); or
- (b) regulation 21B(2), where that decision was taken in the preceding twelve months.”.

Regulation 15B (continuation of a right of residence)

12. In regulation 15B, in paragraph (5), for “19(3)(b)” substitute “19(3)(b) or (c)”.

Regulation 19 (exclusion and removal from the United Kingdom)

13. In regulation 19 (exclusion and removal from the United Kingdom)—

(a) after paragraph (1A), insert—

“(1AB) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if the Secretary of State considers there to be reasonable grounds to suspect that his admission would lead to the abuse of a right to reside in accordance with regulation 21B(1).”;

(b) in paragraph (3), for sub-paragraphs (a) and (b) substitute—

“(a) that person does not have or ceases to have a right to reside under these Regulations;

(b) the Secretary of State has decided that the person’s removal is justified on grounds of public policy, public security or public health in accordance with regulation 21; or

(c) the Secretary of State has decided that the person’s removal is justified on grounds of abuse of rights in accordance with regulation 21B(2).”.

Regulation 20 (refusal to issue or renew and revocation of residence documentation)

14. In regulation 20—

(a) in paragraph (1), at the end, insert “or on grounds of abuse of rights in accordance with regulation 21B(2)”;

(b) in paragraphs (2) and (3), after “has ceased to have”, insert “, or never had,”.

Regulation 20A (cancellation of a right of residence)

15. In regulation 20A—

- (a) in paragraph 2(b), at the end, insert “or on grounds of abuse of rights in accordance with regulation 21B(2)”; and
- (b) in paragraph 2(d), at the end, insert “or (c)”.

New regulation 20B (Verification of right to reside)

16. After regulation 20A insert—

“Verification of a right of residence

20B.—(1) This regulation applies when the Secretary of State—

- (a) has reasonable doubt as to whether a person (“A”) has a right to reside under regulation 14(1) or (2); or
- (b) wants to verify the eligibility of a person (“A”) to apply for documentation issued under Part 3.

(2) The Secretary of State may invite A to—

- (a) provide evidence to support the existence of a right to reside, or to support an application for documentation under Part 3; or
- (b) attend an interview with the Secretary of State.

(3) If A purports to be entitled to a right to reside on the basis of a relationship with another person (“B”), the Secretary of State may invite B to—

- (a) provide information about their relationship with A; or
- (b) attend an interview with the Secretary of State.

(4) If, without good reason, A or B fail to provide the additional information requested or, on at least two occasions, fail to attend an interview if so invited, the Secretary of State may draw any factual inferences about A’s entitlement to a right to reside as appear appropriate in the circumstances.

(5) The Secretary of State may decide following an inference under paragraph (4) that A does not have or ceases to have a right to reside.

(6) But the Secretary of State must not decide that A does not have or ceases to have a right to reside on the sole basis that A failed to comply with this regulation.

(7) This regulation may not be invoked systematically.

(8) In this regulation, “a right to reside” means a right to reside under these Regulations.”.

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

17. In regulation 21A, in paragraph 3(a), omit the quotation marks surrounding “justified on grounds of public policy, public security or public health in accordance with regulation 21”.

New regulation 21B (abuse of rights or fraud)

18. After regulation 21A, insert—

“Abuse of rights or fraud

21B.—(1) The abuse of a right to reside includes—

- (a) engaging in conduct which appears to be intended to circumvent the requirement to be a qualified person;

- (b) attempting to enter the United Kingdom within 12 months of being removed pursuant to regulation 19(3)(a), where the person attempting to do so is unable to provide evidence that, upon re-entry to the United Kingdom, the conditions for any right to reside, other than the initial right of residence under regulation 13, will be met;
- (c) entering, attempting to enter or assisting another person to enter or attempt to enter, a marriage or civil partnership of convenience; or
- (d) fraudulently obtaining or attempting to obtain, or assisting another to obtain or attempt to obtain, a right to reside.

(2) The Secretary of State may take an EEA decision on the grounds of abuse of rights where there are reasonable grounds to suspect the abuse of a right to reside and it is proportionate to do so.

(3) Where these Regulations provide that an EEA decision taken on the grounds of abuse in the preceding twelve months affects a person's right to reside, the person who is the subject of that decision may apply to the Secretary of State to have the effect of that decision set aside on grounds that there has been a material change in the circumstances which justified that decision.

(4) An application under paragraph (3) may only be made whilst the applicant is outside the United Kingdom.

(5) This regulation may not be invoked systematically.

(6) In this regulation, "a right to reside" means a right to reside under these Regulations."

Regulation 22 (person claiming right of admission)

19. In regulation 22—

(a) for paragraph (1)(a) substitute—

“(a) a person, not being an EEA national, who—

- (i) is a family member of an EEA national;
- (ii) is a family member who has retained the right of residence;
- (iii) has a derivative right of residence;
- (iv) has a permanent right of residence under regulation 15; or
- (v) is in possession of a qualifying EEA State residence card; or”;

(b) in paragraph (1)(b), for “or (1A)” substitute “(1A) or (1AB).

Regulation 23 (person refused admission)

20. In regulation 23—

(a) in paragraph (1)(b), after “(1A)” insert “, (1AB)”;

(b) in paragraph (2), for “or a permanent residence card”, substitute, “, a qualifying EEA State residence card, or a permanent residence card”.

Regulation 24 (person subject to removal)

21. In regulation 24, in paragraph (2), after “19(3)(a)” insert “or (c)”.

Regulation 26 (appeal rights)

22. In regulation 26, after paragraph (3)(b)(i), insert “(ia) a qualifying EEA State residence card;”.

Regulation 27 (out of country appeals)

23. In regulation 27, in paragraph (2)(a), for “or permanent residence card” substitute “, permanent residence card or qualifying EEA State residence card.”.

New regulation 28A (national security: EEA decisions)

24. After regulation 28, insert—

“National security: EEA Decisions

28A.—(1) Section 97A(a) of the 2002 Act applies to an appeal against an EEA decision where the Secretary of State has certified under regulation 28(2) or (4) that the EEA decision was taken in the interests of national security.

(2) Where section 97A so applies, it has effect as if—

- (a) the references in that section to a deportation order were to an EEA decision;
- (b) subsections (1), (1A), (2)(b) and (4) were omitted;
- (c) the reference in subsection (2)(a) to section 79 were a reference to regulations 27(2) and (3) and 29 of these Regulations; and
- (d) in subsection (2A), for sub-paragraphs (a) and (b), “against an EEA decision” were substituted.”.

Schedule 2 (effect on other legislation)

25. In Schedule 2—

- (a) in paragraph 3 (carriers’ liability under Part II of the Immigration and Asylum Act 1999(b)), after “derivative residence card”, insert, “, a qualifying EEA State residence card”; and
- (b) in paragraph 4(1)(a) (appeals under the 2002 Act and previous immigration Acts), after “19(3)(a)” insert “or 19(3)(c)”.

SCHEDULE 2

Regulation 5

Consequential Amendments

The Channel Tunnel (International Arrangements) Order 1993

1. In paragraph 5(a) of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993(c)—

- (a) for “(3)”, substitute “(2A)”; and
- (b) for “or permanent residence card”, substitute “, permanent residence card or qualifying EEA State residence card”.

(a) Section 97A of the Nationality, Immigration and Asylum 2002 Act (c. 41) was inserted by section 7(1) of the Immigration, Nationality and Asylum Act 2006 (c. 13); section 54 of the Crime and Courts Act 2013 (c. 22) inserted subsections (1A) and (2A) to (2L) into, and substituted subsection (2)(c) in, section 97A.

(b) 1999 c. 33.

(c) S.I. 1993/1813, as amended by S.I. 2001/3707, 2006/1003, 2007/3579 and 2012/1547; there are other amending instruments but none is relevant.

The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003

2. In paragraph 5(b) of Schedule 2 to the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003(a)—

- (a) in the heading, for “2000”, substitute “2006”;
- (b) for “(3)”, substitute “(2A)”; and
- (c) for “or permanent residence card”, substitute “, permanent residence card or qualifying EEA State residence card”.

The Accession (Immigration and Worker Authorisation) Regulations 2006

3.—(1) The Accession (Immigration and Worker Authorisation) Regulations 2006(b) are amended in accordance with this paragraph.

(2) In regulation 7, in paragraph (2), for “The Secretary” substitute “During the accession period, the Secretary”.

(3) In regulation 11(1), for “Subject” substitute “During the accession period, subject”.

SCHEDULE 3

Regulation 6

Transitional Provisions

Qualified person

1. For the purposes of paragraph 3(b) to (e) of Schedule 1—

- (a) any period of employment in the United Kingdom before the coming into force of these Regulations is to be treated as a period of employment under regulation 6 of the 2006 Regulations as amended by these Regulations; and
- (b) any period—
 - (i) of duly recorded involuntary unemployment; or
 - (ii) during which a person was a jobseeker for the purposes of regulation 6(1)(a) of the 2006 Regulations,

before the coming into force of these Regulations is to be disregarded.

Family members of British citizens

2.—(1) The substitution of regulation 9 of the 2006 Regulations by paragraph 5 of Schedule 1 has no effect in relation to the family member (“F”) of a British citizen where the criteria in subparagraphs (2) or (3) are met.

(2) The criterion in this subparagraph is met where, upon the coming into force of these Regulations, F was a person with a permanent right to reside in the United Kingdom under the 2006 Regulations.

(3) The criteria in this subparagraph are met where, upon the coming into force of these Regulations, F was a person with a right to reside under the 2006 Regulations; and

- (a) held a valid registration certificate, residence card or EEA family permit issued under the 2006 Regulations;
- (b) had made an application under the 2006 Regulations for a registration certificate, residence card or EEA family permit which had not been determined; or

(a) S.I. 2003/2818, as amended by S.I. 2006/1003 and 2012/1547; there are other amending instruments but none is relevant.

(b) S.I. 2006/3317, as amended by S.I. 2007/475, 3012, 3224, 2009/2426, 2748, 2010/1836, 2011/2816 and 2012/1809.

- (c) 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 is in the United Kingdom (excluding the possibility of an appeal out of time with permission) or was pending (within the meaning of regulation 25(2) of the 2006 Regulations).

(4) Where met, the criteria in subparagraphs (2) and (3) remain satisfied until the occurrence of the earliest of the following events—

- (a) the date six months after an EEA family permit has been issued if F has not within that period been admitted to the United Kingdom;
- (b) the date on which an appeal against a decision referred to in subparagraph (3)(c) can no longer be brought (ignoring the possibility of an appeal out of time with permission) where no such appeal has been brought;
- (c) the date on which any appeal against a decision referred to in subparagraph 3(c) is finally determined, is withdrawn or is abandoned (within the meaning of regulation 25(2) of the 2006 Regulations), save where the outcome of the appeal process is that the document in question falls to be granted;
- (d) the date on which F ceases to be the family member of an EEA national or a family member who has retained the right of residence, within the meaning of regulation 10 of the 2006 Regulations; or
- (e) the date on which F's right of residence under regulation 15 of the 2006 Regulations (permanent right of residence) is lost in accordance with paragraph (2) of that regulation (right of permanent residence lost through more than two years' consecutive absence).

Abuse of rights or fraud

3. For the purposes of paragraph 18 of Schedule 1, insofar as it inserts regulation 21B(1)(b) into the 2006 Regulations, any removal pursuant to regulation 19(3)(a) of the 2006 Regulations before the coming into force of these Regulations is to be disregarded.

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”) in order to amend the transposition in the United Kingdom of Directive 2004/38/EC of the European Parliament and of 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 (OJ No. L 158, 30.4.04, p77) (“Directive 2004/38/EC”). The Regulations also amend the way the United Kingdom gives effect to certain judgments of the Court of Justice of the European Union (“CJEU”), and address issues concerning the practical application of the 2006 Regulations.

These Regulations come into force on 1st January 2014, except for the provisions concerning “qualifying EEA State residence cards” (see paragraph 6 of Schedule 1), which come into force on 7th April 2014.

Paragraph 3 of Schedule 1 to the Regulations (“the Schedule”) amends regulation 6 of the Regulations in order to restrict the extent to which a person who is involuntarily unemployed may retain the status of “worker”. Where a person worked for more than 12 months before becoming involuntarily unemployed, worker status may be retained for up to six months while the person is seeking work and has genuine prospects of employment, and for longer if the person can provide compelling evidence that he or she continues to seek work and has a genuine chance of being engaged. The new regulation 6(2)(ba) and (2A) provides that a person who has worked for less than 12 months may only retain worker status for a maximum of six months. Changes are also made to the definition of “jobseeker” to clarify that a person may be a jobseeker both upon entering the UK, and where they have previously enjoyed a right to reside as a “qualified person” in another capacity. A person may only retain jobseeker status for more than 6 months if they are able to provide compelling evidence of seeking work and having a genuine chance of being engaged. These changes reflect the requirements of Article 7(3) of Directive 2004/38/EC.

Paragraph 4 of the Schedule inserts a new regulation 7B into the 2006 Regulations to provide for how residence by an accession State national previously subject to worker authorisation, as defined by the Accession (Immigration and Worker Authorisation) Regulations 2006 (S.I. 2006/3317) (“the EU2 Regulations”), should be treated for the purposes of calculating periods of residence under the 2006 Regulations.

Paragraph 5 of the Schedule replaces the existing regulation 9 of the 2006 Regulations to require a British citizen to have “transferred the centre of his or her life” to another member State in order to acquire a right of residence in the UK for his or her non-EEA family member seeking a right to reside in the UK upon their return. Factors relevant to whether the centre of a person’s life has been transferred to another member State include the period of residence in that member State, the location of that person’s principal residence, and the degree of integration. These changes are to ensure that a British citizen engages in genuine and effective use of the rights conferred by Directive 2004/38/EC before a right to reside in the United Kingdom is conferred on a non-EEA family member.

Paragraph 6 of the Schedule amends regulation 11 of the 2006 Regulations to provide that a non-EEA national who presents a “qualifying EEA State residence card” may be admitted to the UK. A “qualifying EEA State residence card” is a residence card issued under Article 10 of Directive 2004/38/EC by an EEA State listed in regulation 2 of the 2006 Regulations as amended by these Regulations, currently Germany and Estonia.

Paragraph 14(b) of the Schedule clarifies that the Secretary of State may revoke certain residence documentation where the person to whom it was issued never had a right to reside.

Paragraph 16 inserts new regulation 20B into the 2006 Regulations. Where the Secretary of State has reasonable doubt about a person’s right to reside under the 2006 Regulations, or wants to verify the identity of a person to apply for documentation under Part 3 of those regulations, the new regulation 20B allows that person, or a person connected to their right to reside (e.g. an EEA family member) to be invited for interview by the Secretary of State. Where that person, or a

person connected to their right to reside, without good reason, fails to provide the requested information, or, on at least two occasions to attend an interview if so invited, the Secretary of State may decide that he or she is not entitled to a right to reside under the 2006 Regulations. The failure to attend an interview cannot be the sole basis for such a decision, nor should this provision be used in a systematic manner.

Paragraph 17 of the Schedule makes a minor amendment to regulation 21A of the 2006 Regulations, which governs the test to be applied when taking a decision under Part 4 of the 2006 Regulations (refusal of admission and removal etc) in relation to a person with a derivative right of residence. The quotation marks in regulation 21A(3)(a) of the 2006 Regulations surrounding “justified on grounds of public policy, public security or public health in accordance with regulation 21” are not required.

Paragraph 18 of the Schedule inserts a new regulation 21B in to the 2006 Regulations. This gives effect to Article 35 of Directive 2004/38/EC which provides that member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by that Directive in the case of abuse of rights or fraud. The new regulation prevents people from evading the requirements for an extended right of residence under the 2006 Regulations, for example by attempting repeatedly to re-enter the United Kingdom in order to engage regulation 13 (initial right of residence). Where a person has been removed from the UK on one previous occasion in a 12 month period for not having a right to reside, the new regulation 21B allows that person to be refused admission if they cannot demonstrate that, upon re-entry, they will have a right to reside other than that provided by regulation 13. Where a person is involved in a marriage or civil partnership of convenience or other fraudulent activity, measures to terminate or refuse a right to reside may also be taken.

Paragraph 24 of the Schedule inserts a new regulation 28A into the 2006 Regulations which applies section 97A of the Nationality, Immigration and Asylum Act 2002 (c. 41) to EEA decisions made under the 2006 Regulations in certain national security cases. The new regulation 28A will apply where the Secretary of State has certified under regulation 28(2) – (4) of the 2006 Regulations that an EEA decision has been taken on national security grounds. Section 97A as applied by these Regulations will prevent an appeal from being brought against that decision from within the United Kingdom, if the Secretary of State has certified that the removal of that person pending the appeal would not breach the United Kingdom’s obligations under the European Convention on Human Rights.

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.

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