

HJT KEELING SCHEDULE

S T A T U T O R Y I N S T R U M E N T S

2018 No. 801

The Immigration (European Economic Area) (Amendment) Regulations 2018

Made	2nd July 2018
Laid before Parliament	3rd July 2018
Coming into force	24th July 2018

The Secretary of State, being a Minister designated¹ for the purposes of section 2(2) of the European Communities Act 1972² 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 2002,³ makes the following Regulations.

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2018.
- (2) These Regulations come into force on 24th July 2018.
- (3) In these Regulations “the 2016 Regulations” means the Immigration (European Economic Area) Regulations 2016.⁴

Amendment of the 2016 Regulations

2. The 2016 Regulations are amended as set out in the Schedule.

Transitional provision

3. In determining whether a person satisfies the requirements in regulation 9A(2) to (4) of the 2016 Regulations (dual national: national of an EEA State who acquires British citizenship), inserted by paragraph 4 of the Schedule—
 - (a) the definition of “EEA national” in regulation 2(1) of the 2016 Regulations (general interpretation) is to be read as if the amendment made to that definition by paragraph 1 of the Schedule was in force at all times relevant to such determination; and
 - (b) regulation 9A of the 2016 Regulations is to be treated as if it was in force at all times relevant to such determination.

Saving provision

4. Notwithstanding the amendment to regulation 37 of the 2016 Regulations (out of country appeals) made by paragraph 15 of the Schedule, regulation 37 as in force immediately before the coming into force of these Regulations continues to apply to an appeal that is pending (within the meaning of regulation 35 of the 2016 Regulations (interpretation of Part 6)).

Caroline Nokes
Minister of State
Home Office
2nd July 2018

SCHEDULE

Amendments to the 2016 Regulations

Regulation 2 (general interpretation)

1. In regulation 2(1), for the definition of “EEA national” substitute—

““EEA national” means—

- (a) a national of an EEA State who is not also a British citizen; or
- (b) a national of an EEA State who is also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national, in accordance with regulation 14 or 15, save that a person does not fall within paragraph (b) if the EEA State of which they are a national became a member State after that person acquired British citizenship.”

for

~~“EEA national” means a national of an EEA State who is not also a British citizen;~~

¹ [S.I. 2000/1813](#).

² [1972 c. 68](#). Section 2(2) was amended by Legislative and Regulatory Reform Act [2006 \(c. 51\)](#), sections 27(1)(a) and 33; European Union (Amendment) Act [2008 \(c. 7\)](#), sections 3, 8 and Schedule Part 1; and [S.I. 2009/3143](#).

³ [2002 c. 41](#).

⁴ [S.I. 2016/1052](#), as amended by [S.I. 2017/1](#) and [S.I. 2017/1242](#).

Regulation 6 (“qualified person”)

2. In regulation 6— (a) in paragraph (1) in paragraph (a) of the definition of “relevant period” after “(2)(b)” insert “or self-employed person status under paragraph (4)(b)”;

6. “Qualified person”

(1) In these Regulations—

...

“relevant period” means—

(a) in the case of a person retaining worker status under paragraph (2)(b) or self-employed person status under paragraph (4)(b), a continuous period of six months;

(b) for paragraph (4)

~~(4) A person who is no longer in self-employment continues to be treated as a self-employed person if that person is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident.~~

substitute—

“(4) A person who is no longer in self-employment must continue to be treated as a self-employed person provided that the person—

(a) is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident;

(b) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for at least one year provided the person—

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions D and E;

(c) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for less than one year, provided the person—

(i) has registered as a jobseeker with the relevant employment office; and

(ii) satisfies conditions D and E;

(d) is involuntarily no longer in self-employment and has embarked on vocational training; or

(e) has voluntarily ceased self-employment and has embarked on vocational training that is related to the person’s previous occupation.

(4A) A person to whom paragraph (4)(c) applies may only retain self-employed person status for a maximum of six months.

(4B) Condition D is that the person—

(a) entered the United Kingdom as a self-employed person or in order to seek employment as a self-employed person; or

(b) is present in the United Kingdom seeking employment or self-employment, immediately after enjoying a right to reside under sub-paragraphs (c) to (e) of the definition of qualified person in paragraph (1) (disregarding any period during which self-employed status was retained pursuant to paragraph (4)(b) or (c)).

(4C) Condition E is that the person provides evidence of seeking employment or self-employment and having a genuine chance of being engaged.”;

(c) in paragraph (5)(b), for “sub-paragraphs (b) to (e)” substitute “sub-paragraphs (b), (d) or (e)”;

(d) at the end of paragraph (7)(a) omit “or”;

(e) after paragraph (7)(b) insert “or (c) a self-employed person under paragraph (4)(b)”;

(f) in paragraph (8)—

(i) after “conditions A and B” insert “or, as the case may be, conditions D and E”; and

(ii) in paragraph (a), after “or (c)” insert “or (4)(b) or (c)”;

(g) in paragraph (10)(b), after “condition B” insert “or, as the case may be, condition E”.

Regulation 9 (family members of British citizens)

3. In regulation 9—

(a) omit “~~and~~” at the end of paragraph (2)(b);

(b) after paragraph (2)(c), insert—

“(d) F was a family member of BC during all or part of their joint residence in the EEA State; and
(e) genuine family life was created or strengthened during their joint residence in the EEA State”.

9.— Family members of British citizens

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

(2) The conditions are that—

(a) BC—

(i) is residing in an EEA State as a worker, self-employed person, self-sufficient person or a student, or so resided immediately before returning to the United Kingdom; or

(ii) has acquired the right of permanent residence in an EEA State;

(b) F and BC resided together in the EEA State; ~~and~~

(c) F and BC's residence in the EEA State was genuine.

“(d) F was a family member of BC during all or part of their joint residence in the EEA State; and

(e) genuine family life was created or strengthened during their joint residence in the EEA State”.

(3)-(7)...

New regulation 9A (Dual national: national of an EEA State who acquires British citizenship)

4. After regulation 9 insert—

“9A. Dual national: national of an EEA State who acquires British citizenship

(1) In this regulation “DN” means a person within paragraph (b) of the definition of “EEA national” in regulation 2(1).

(2) DN who comes within the definition of “qualified person” in regulation 6(1) is only a qualified person for the purpose of these Regulations if DN—

(a) came within the definition of “qualified person” at the time of acquisition of British citizenship; and

(b) has not at any time subsequent to the acquisition of British citizenship lost the status of qualified person.

(3) Regulation 15 only applies to DN, or to the family member of DN who is not an EEA national, if DN satisfies the condition in paragraph (4).

(4) The condition in this paragraph is that at the time of acquisition of British citizenship DN either—

(a) was a qualified person; or

(b) had acquired a right of permanent residence in accordance with these Regulations.”.

Regulation 11 (right of admission to the United Kingdom)

5. In regulation 11, after paragraph (8) insert—

“(9) A person is not entitled to be admitted by virtue of this regulation where that person is subject to a decision under regulation 23(6)(b) (removal decision).”.

11.— Right of admission to the United Kingdom

...

(8) But this regulation is subject to [regulations 23\(1\), \(2\), \(3\) and \(4\)](#) and [31](#).

“(9) A person is not entitled to be admitted by virtue of this regulation where that person is subject to a decision under regulation 23(6)(b) (removal decision).”.

Regulation 12 (issue of EEA family permit)

6. In regulation 12, after paragraph (5) insert—

12.— Issue of EEA family permit

(1)-(5)...

“(5A) An EEA family permit issued under this regulation may be issued in electronic form.”.

Regulation 13 (initial right of residence)

7. In regulation 13, in paragraph (4), for ~~“unless that decision is set aside or otherwise no longer has effect”~~, substitute “or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect”.

13.— Initial right of residence

(1) An EEA national is entitled to reside in the United Kingdom for a period not exceeding three months beginning on the date of admission to the United Kingdom provided the EEA national holds a valid national identity card or passport issued by an EEA State.

(2) A person who is not an EEA national but is a family member who has retained the right of residence or the family member of an EEA national residing in the United Kingdom under paragraph (1) is entitled to reside in the United Kingdom provided that person holds a valid passport.

(3) An EEA national or the family member of an EEA national who is an unreasonable burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation.

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside under this regulation where the Secretary of State or an immigration officer has made a decision under [regulation 23\(6\)\(b\)](#) (decision to remove on grounds of public policy, public security or public health), [24\(1\)](#) (refusal to issue residence documentation etc), [25\(1\)](#) (cancellation of a right of residence), [26\(3\)](#) (misuse of right to reside) or [31\(1\)](#) (revocation of admission), or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect”. ~~unless that decision is set aside or otherwise no longer has effect.~~

Regulation 14 (extended right of residence)

8. In regulation 14, in paragraph (4), for ~~“unless that decision is set aside or otherwise no longer has effect”~~, substitute “or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect”.

14.— Extended right of residence

(1) A qualified person is entitled to reside in the United Kingdom for as long as that person remains a qualified person.

(2) A person (“P”) who is a family member of a qualified person residing in the United Kingdom under paragraph (1) or of an EEA national with a right of permanent residence under [regulation 15](#) is entitled to remain in the United Kingdom for so long as P remains the family member of that person or EEA national.

(3) A family member who has retained the right of residence is entitled to reside in the United Kingdom for so long as that person remains a family member who has retained the right of residence.

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside in the United Kingdom under this regulation where the Secretary of State or an immigration officer has made a decision under [regulation 23\(6\)\(b\)](#), [24\(1\)](#), [25\(1\)](#), [26\(3\)](#) or [31\(1\)](#), “or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect”. ~~unless that decision is set aside or otherwise no longer has effect.~~

Regulation 15 (right of permanent residence)

9. In regulation 15, in paragraph (4), for ~~“unless that decision is set aside or otherwise no longer has effect”~~, substitute “or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect”.

15.— Right of permanent residence

- (1) The following persons acquire the right to reside in the United Kingdom permanently—
- (a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;
 - (b) a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;
 - (c) a worker or self-employed person who has ceased activity;
 - (d) the family member of a worker or self-employed person who has ceased activity, provided—
 - (i) the person was the family member of the worker or self-employed person at the point the worker or self-employed person ceased activity; and
 - (ii) at that point, the family member enjoyed a right to reside on the basis of being the family member of that worker or self-employed person;
 - (e) a person who was the family member of a worker or self-employed person where—
 - (i) the worker or self-employed person has died;
 - (ii) the family member resided with the worker or self-employed person immediately before the death; and
 - (iii) the worker or self-employed person had resided continuously in the United Kingdom for at least two years immediately before dying or the death was the result of an accident at work or an occupational disease;
 - (f) a person who—
 - (i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and
 - (ii) was, at the end of the period, a family member who has retained the right of residence.
- (2) Residence in the United Kingdom as a result of a derivative right to reside does not constitute residence for the purpose of this regulation.
- (3) The right of permanent residence under this regulation is lost through absence from the United Kingdom for a period exceeding two years.
- (4) A person who satisfies the criteria in this regulation is not entitled to a right to permanent residence in the United Kingdom where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b) , 24(1) , 25(1) , 26(3) or 31(1), “or an order under regulation 23(5) (exclusion order) or 32(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect”. ~~unless that decision is set aside or otherwise no longer has effect.~~

Regulation 16 (derivative right to reside)

10. In regulation 16(8)(b)(ii), omit ~~“who is not an exempt person”~~.

16.— Derivative right to reside

- (1) A person has a derivative right to reside during any period in which the person—
- (a) is not an exempt person; and
 - (b) satisfies each of the criteria in one or more of paragraphs (2) to (6).
- ...
- (8) A person is the “primary carer” of another person (“AP”) if—
- (a) the person is a direct relative or a legal guardian of AP; and
 - (b) either—
 - (i) the person has primary responsibility for AP's care; or
 - (ii) shares equally the responsibility for AP's care with one other person ~~who is not an exempt person.~~
- (9)-(12)...

Regulation 21 (procedure for applications for documentation under this Part and regulation 12)

11. In regulation 21—⁵

(a) in paragraph (2)(a) omit ~~“or joined”~~;

(b) after paragraph (4) insert—“(4A) An application for documentation under this Part, or for an EEA family permit under regulation 12, is invalid where the person making the application is subject to a removal decision made under regulation 23(6)(b), a deportation order made under regulation 32(3) or an exclusion order made under regulation 23(5).”.

(c) in paragraph (5) omit ~~“or joined”~~.

21.— Procedure for applications for documentation under this Part and regulation 12

(1) An application for documentation under this Part, or for an EEA family permit under [regulation 12](#), must be made—

- (a) online, submitted electronically using the relevant pages of [www.gov.uk](#); or
- (b) by post or in person, using the relevant application form specified by the Secretary of State on [www.gov.uk](#).

(2) All applications must—

- (a) be accompanied ~~or joined~~ by the evidence or proof required by this Part or [regulation 12](#), as the case may be, as well as that required by paragraph [(5)] ¹, within the time specified by the Secretary of State on [www.gov.uk](#); and
- (b) be complete.

(3) An application for a residence card or a derivative residence card must be submitted while the applicant is in the United Kingdom.

(4) When an application is submitted otherwise than in accordance with the requirements in this regulation, it is invalid.

“(4A) An application for documentation under this Part, or for an EEA family permit under regulation 12, is invalid where the person making the application is subject to a removal decision made under regulation 23(6)(b), a deportation order made under regulation 32(3) or an exclusion order made under regulation 23(5).”

(5) Where an application for documentation under this Part is made by a person who is not an EEA national on the basis that the person is or was the family member of an EEA national or an extended family member of an EEA national, the application must be accompanied ~~or joined~~ by a valid national identity card or passport in the name of that EEA national.

(6) Where—

- (a) there are circumstances beyond the control of an applicant for documentation under this Part; and
- (b) as a result, the applicant is unable to comply with the requirements to submit an application online or using the application form specified by the Secretary of State, the Secretary of State may accept an application submitted by post or in person which does not use the relevant application form specified by the Secretary of State.

Regulation 24 (refusal to issue or renew and revocation of residence documentation)

12. In regulation 24,⁶ in paragraph (6), after “EEA family permit” insert “, including one issued in electronic form.”.

24.— Refusal to issue or renew and revocation of residence documentation

(6) An entry clearance officer [or an immigration officer] ¹ may at any time revoke a person's EEA family permit “, including one issued in electronic form.” if—

- (a) the revocation is justified on grounds of public policy, public security or public health; or
- (b) the person is not at that time the family member of an EEA national with the right to reside in the United Kingdom under these Regulations or is not accompanying that EEA national or joining that EEA national in the United Kingdom.

⁵ Regulation 21 was amended by [S.I. 2017/1](#).

⁶ Regulation 29(3) was substituted by [S.I. 2017/1242](#).

(7)...

Regulation 27 (decisions taken on grounds of public policy, public security and public health)

13. In regulation 27(4)(a), at the beginning insert “has a right of permanent residence under regulation 15 and who”.

27.— Decisions taken on grounds of public policy, public security and public health

(1) In this regulation, a “*relevant decision*” means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under [regulation 15](#) except on serious grounds of public policy and public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

(a) “has a right of permanent residence under regulation 15 and who” has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 ¹.

(5)-(8)...

Regulation 36 (appeal rights)

14. In regulation 36, after paragraph (11) insert—

“(12) Where there is a requirement under this regulation to produce an EEA family permit—

(a) where notice of appeal is given electronically, the permit may be produced either in paper or electronic form;

(b) in all other cases, the permit must be produced in paper form.”.

36.— Appeal rights

(1) The subject of an EEA decision may appeal against that decision under these Regulations.

(2) If a person claims to be an EEA national, that person may not appeal under these Regulations without producing a valid national identity card or passport issued by an EEA State.

(3) If a person claims to be in a durable relationship with an EEA national, that person may not appeal under these Regulations without producing—

(a) a valid passport; and

(b) either—

(i) an EEA family permit; or

(ii) sufficient evidence to satisfy the Secretary of State that the person is in a relationship with the EEA national.

(4) If a person to whom paragraph (2) does not apply claims to be the family member of an EEA national under [regulation 7](#), the relative of an EEA national who is an extended family member under [regulation 8](#), or a family member who has retained the right of residence under [regulation 10](#), that person may not appeal under these Regulations without producing—

(a) a valid passport; and

(b) either—

(i) an EEA family permit

(ii) a qualifying EEA State residence card;

(iii) in the case of a person claiming to be the family member of an EEA national, proof that the criteria in [regulation 7](#) are met; or

- (iv) in the case of a person claiming to be a family member who has retained the right of residence, proof that the criteria in [regulation 10](#) are met.
- (5) If a person (“P”) claims to have a derivative right to reside, P may not appeal under these Regulations unless P produces a valid national identity card issued by an EEA State or a valid passport, and either—
- (a) an EEA family permit; or
- (b) where P claims to have a derivative right to reside as a result of—
- (i) [regulation 16\(2\)](#), proof that P is a direct relative or legal guardian of an EEA national who is under the age of 18;
- (ii) [regulation 16\(3\)](#), proof that P is the child of an EEA national;
- (iii) [regulation 16\(4\)](#), proof that P is a direct relative or legal guardian of the child of an EEA national;
- (iv) [regulation 16\(5\)](#), proof that P is a direct relative or legal guardian of a British citizen;
- (v) [regulation 16\(6\)](#), proof that P is under the age of 18 and is a dependant of a person satisfying the criteria in paragraph (i), (iii) or (iv).
- (6) If a person claims to be entitled to a right to reside under [regulation 9](#) (family members of British citizens), that person may not appeal without producing a valid passport and either—
- (a) an EEA family permit; or
- (b) a qualifying EEA State residence card; and
- (i) proof that the criteria to be a family member of the British citizen are met; and
- (ii) proof that the British citizen is residing, or did reside, in another EEA State as a worker, self-employed person, self-sufficient person or student.
- (7) The Secretary of State or an immigration officer may certify a ground for the purposes of paragraph (8) if it has been considered in a previous appeal brought under these Regulations or under [section 82\(1\)](#) of the 2002 Act ¹.
- (8) A person may not bring an appeal under these Regulations on a ground certified under paragraph (7) or rely on such a ground in an appeal brought under these Regulations.
- (9) Except where an appeal lies to the Commission, an appeal under these Regulations lies to the First-tier Tribunal.
- (10) The provisions of, or made under, the 2002 Act referred to in [Schedule 2](#) have effect for the purposes of an appeal under these Regulations to the First-tier Tribunal in accordance with that Schedule.
- (11) Nothing in this Part prevents a person who has a right of appeal under this regulation from appealing to the First-tier Tribunal under [section 82\(1\)](#) of the 2002 Act (right of appeal to the Tribunal), or, where relevant, to the Commission pursuant to [section 2](#) of the 1997 Act (jurisdiction of the Commission: appeals) ², provided the criteria for bringing such an appeal under those Acts are met.
- “(12) Where there is a requirement under this regulation to produce an EEA family permit—
- (a) where notice of appeal is given electronically, the permit may be produced either in paper or electronic form;
- (b) in all other cases, the permit must be produced in paper form.”.

Regulation 37 (out of country appeals)

15. In regulation 37, for paragraph (2)(a) substitute—

“(a) the person, not being a person who is deemed not to have been admitted to the United Kingdom under regulation 29(3)(7)—

(i) holds a valid EEA family permit, registration certificate, residence card, derivative residence card, document certifying permanent residence, permanent residence card or qualifying EEA State residence card on arrival in the United Kingdom; or

(ii) can otherwise prove that the person is resident in the United Kingdom; or”.

37.— Out of country appeals

(1) Subject to paragraph (2), a person may not appeal under [regulation 36](#) whilst in the United Kingdom against an EEA decision—

(a) to refuse to admit that person to the United Kingdom;

(b) to revoke that person's admission to the United Kingdom;

(c) to make an exclusion order against that person;

(d) to refuse to revoke a deportation or exclusion order made against the person;

(e) to refuse to issue the person with an EEA family permit;

(f) to revoke, or to refuse to issue or renew any document under these

Regulations where that decision is taken at a time when the person is outside the United Kingdom; or

(g) to remove the person from the United Kingdom following entry to the United Kingdom in breach of a deportation or exclusion order, or in circumstances where that person was not entitled to be admitted pursuant to [regulation 23\(1\), \(2\), \(3\) or \(4\)](#).

(2) Sub-paragraphs (a) to (c) of paragraph (1) do not apply where the person is in the United Kingdom and—

“(a) the person, not being a person who is deemed not to have been admitted to the United Kingdom under regulation 29(3)(7)—

(i) holds a valid EEA family permit, registration certificate, residence card, derivative residence card, document certifying permanent residence, permanent residence card or qualifying EEA State residence card on arrival in the United Kingdom; or

(ii) can otherwise prove that the person is resident in the United Kingdom; or”.

~~(a) the person holds a valid EEA family permit, registration certificate, residence card, derivative residence card, document certifying permanent residence, permanent residence card or qualifying EEA State residence card on arrival in the United Kingdom or the person can otherwise prove that the person is resident in the United Kingdom; or~~

(b) the person is deemed not to have been admitted to the United Kingdom under [regulation 29\(3\)](#) but at the date on which notice of the decision to refuse admission is given the person has been in the United Kingdom for at least 3 months.