

**From:** Free Movement Operational Policy Team

**Subject:** Amendments to the Immigration (EEA) Regulations 2006

**Date:** 02 April 2015

**Issue number:** 04/2015

### **Purpose of notice**

1. This notice provides a summary of changes made to the Immigration (European Economic Area) Regulations 2006 ("the Regulations") that come into effect on 6<sup>th</sup> April 2015.

### **Background**

2. A number of changes have been made to the Regulations in order to streamline the EEA appeals regime, and the commencement of these changes will coincide with the full commencement of the Immigration Act 2014 ("the 2014 Act") on 6 April. In addition, several further changes have been made to enhance our enforcement powers both in-country and at the Border, to implement the Court of Justice of the European Union (CJEU) judgment in the case of *McCarthy* (C-202/13) and to clarify the requirements for family members of students to hold comprehensive sickness insurance. An overview of these changes has been set out below.

### **Appeals**

3. Following full commencement of the 2014 Act on the 6<sup>th</sup> April, the concept of an appeal against an 'immigration decision', upon which appeals against EEA decisions were previously based, will no longer exist. From 6<sup>th</sup> April appeals under the Nationality Immigration and Asylum 2002 Act ("the 2002 Act") can only be brought on three grounds – protection, human rights, or removal of protection or refugee status ('the tripartite grounds'). It has been necessary, therefore, to make consequential changes to the Regulations to keep the EEA appeals regime functioning, and to bring it into line with the reformed appellate regime for immigration appeals under the 2014 Act.
4. Under the amended Regulations, an EU national, or their family member, will only be able to bring an appeal against an EEA decision on the grounds that it breaches their rights under the EU Treaties in respect of entry to or residence in the United Kingdom. If they wish to raise one of the tripartite grounds of appeal as part of their EEA appeal they can only do this in two ways:

- a. in response to a notice served by the Secretary of State under section 120 of the 2002 Act, or
  - b. as a “new matter” at an appeal under section 85(6) of the 2002 Act, subject to the Secretary of State’s consent.
5. We have restricted the grounds of appeal in this way to ensure that people cannot spuriously raise human rights claims in EEA appeals, nor can they use the EEA regime to have a ‘cheap’ human rights consideration, while simultaneously preventing a human rights claim giving rise to a separate right of appeal that will delay removal.
6. To ensure consistency with the changes to the 2002 Act and the Regulations, the appeals notices used in all refusals of both out of country and in-country EEA decisions has been revised. From 6<sup>th</sup> April 2015 any refusals attracting a right of appeal under the Regulations must use the revised appeals notices. A full list of these notices has been provided in Annex A.
7. Caseworkers should note that the provisions by which an EEA national or their family member can exercise a right of appeal remain unchanged. This means that the criteria for whether or not a person has a right of appeal against a refusal to issue a residence document remain as set out in regulation 26.
8. Further guidance will be issued by the Appeals Policy Team.

### **Revocation of Admission**

9. A new regulation 23A has been inserted into the Regulations and makes provision for a right of admission to be revoked within 24 hours where further information comes to light that would have justified a refusal on the grounds of public policy, public security or abuse of rights.
10. Detailed information on this new power and when it can be used is contained within the Border Force Operations Manual. Any questions on this point should be referred to [name redacted] in the Free Movement Policy Team.

### **Treating EEA nationals as illegal entrants**

11. The power to treat an EEA national as an illegal entrant under the 1971 Act where they have entered the UK in breach of a deportation or exclusion order has been extended to also include EEA nationals who would have been refused admission on public policy, public security or abuse grounds had they presented themselves at the border. This power is aimed at preventing EU nationals trying to circumvent the border and enter through clandestine or fraudulent means, including by deliberately entering through the Common Travel Area.

12. Further guidance on this has been issued to enforcement staff separately via an ICECast and through revised EIGs. Any questions on this point from Enforcement Teams should be referred to [name redacted] in the Free Movement Policy Team.

### **McCarthy C-202/13**

13. Following the judgment of the CJEU in the case of *McCarthy* the UK will now accept valid, genuine residence cards issued by other EEA Member States under Article 10 of Directive the Free Movement Directive, as evidence that the holder is exempt from the requirement to hold an EEA family permit. Permanent residence cards issued under Article 20 of the Directive are also acceptable for this purpose.
14. Amendments have been made to the definition of an 'EEA state qualifying card' in regulation 2 to give effect to this judgment.
15. It is important to note that presentation of such a document **does not** on its own give the holder a right of admission, it simply exempts the holder from the requirement to hold an EEA family permit. Border Force officers should, therefore, give a thorough examination of the claim to a right of admission. Full guidance on how to do that is set out in the Border Force Operating Manual.
16. Applications for documentation in-country where the applicant has presented a residence card issued in another EEA Member State must continue to show that the requirements of the Regulations are met and provide full evidence of any right. Any questions on this point should be referred to [name redacted] in the Free Movement Policy Team.

### **Comprehensive Sickness Insurance**

17. In line with regulation 4, EEA nationals who are exercising Treaty rights in the UK as a student or self-sufficient person are required to hold comprehensive sickness insurance ("CSI"). Previously, this requirement extended to the family members of self-sufficient persons but not to the family members of students. Amendment has been made to the Regulations to rectify this anomaly and the family members of students are now also required to hold CSI whilst in the UK.
18. Details on when and how this will be applied in practice will be contained in a separate EOPN to be issued to the European Casework Team within the next few weeks. In the meantime, caseworkers should continue to require CSI for family members of self-sufficient persons only.

### **Enquiries**

19. Unless otherwise specified, please direct any enquiries about this notice to the Free Movement Operational Policy Team mailbox at the following address in the first instance: [email address redacted]

**[name redacted]**

Head of Free Movement Operational Policy Team

02 April 2015

## **Annex A**

### **Appeals notices in use on or after 6<sup>th</sup> April 2015**

| <b>Basis of application</b>   | <b>Appeals notice</b>  |
|---|--|
| Out of country refusal of an EEA family permit application  | GV51 (ROA) – where right of appeal under regulation 26<br><br>GV51 (NROA) – where no right of appeal under regulation 26 |
| Refusal of admission at border  | IS82A EEA<br><br>IS82B EEA<br><br>IS82C EEA<br><br>IS82 EEA (abroad)   |
| In-country refusal of residence card, registration certificate, derivative residence card, permanent residence card and document certifying permanent residence | ECD. 3126  |