
EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Immigration (European Economic Area) Regulations 2000 (“the 2000 Regulations”). They extend the definition of “family member” for the purpose of those Regulations and replace Part VII of and Schedule 2 to the 2000 Regulations, which deal with appeals, to take account of changes made by the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).

2. Family members of EEA nationals have ancillary rights to enter and remain in the UK. *Regulation 2(3)* amends regulation 6 of the 2000 Regulations by extending the definition of “family member” to take account of judgments of the European Court of Justice in Case C-413/99 *R v Baumbast and “R”, ex parte Secretary of State for the Home Department* [2002] 3 CMLR 599 and Cases C-389, 390/87 *Echternach and Moritz v Minister van Onderwijs* [1989] ECR 723. The divorced spouse of an EEA national is included within the definition of “family member” if he or she is the primary carer of their dependent child who is under 19 and attending an education course in the UK. The spouse or divorced spouse of an EEA national who is the primary carer of such a child is also included within this definition where the EEA national has left the UK and so is no longer exercising free movement rights in relation to the UK, as are their dependent children in certain circumstances. *Regulation 2(5)* makes a consequential amendment to the provisions of the 2000 Regulations on the duration and renewal of resident permits and documents.

3. *Regulation 2(8)* substitutes Part VII (Appeals) of the 2000 Regulations with a new Part VII. As previously, Part VII sets out the right to appeal against a decision under the 2000 Regulations, setting out when such a right arises, when an appeal is to be made to an adjudicator or to the Special Immigration Appeals Commission and when it can be made in the UK or outside of the UK. The main change is that the procedure to be followed in relation to appeals under the 2000 Regulations will be the appeals procedure set out in Part V of the 2002 Act, with some modifications. The sections of Part V of that Act that will apply for these purposes, with the modifications, are set out in a new Schedule 2 to the 2000 Regulations, which is substituted for the existing Schedule by *regulation 2(10)*. *Regulation 2(2)* contains two consequential amendments to the definitions regulation in the 2000 Regulations.

4. *Regulation 2(7)* applies section 120 of the 2002 Act to the situation where a decision under the 2000 Regulations has been taken or may be taken. Section 120 enables the Secretary of State or an immigration officer to require a person to provide a statement setting out his reasons for wishing to enter or remain in the UK, any grounds on which he should be permitted to enter or remain and any grounds on which he should not be removed. *Regulation 2(6)* deletes a reference to provisions in the Immigration and Asylum Act 1999 that will be repealed by the 2002 Act.

5. *Regulation 2(9)* inserts a new regulation 33 into the 2000 Regulations. New regulation 33 adapts provisions of the appeals system in the 2002 Act so that it takes account of appeals under the 2000 Regulations (new regulation 33(3) and (4)). New regulation 33(1) extends the right of appeal under section 83(2) of the 2002 Act to include a person whose asylum claim has been rejected but who has a right to reside in the UK under the 2000 Regulations (and so who would not otherwise be able to appeal against the rejection). New regulation 33(2) provides for nationals of a State, which is not a party to the European Economic Area Agreement but which is party to another European Community agreement which also confers free movement rights, to be treated as an EEA national for the purpose of section 84(1)(d) of the 2002 Act. This will mean that such a national will be able to raise any breach of the free movement rights conferred by such an agreement as a

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ground of appeal under the 2002 Act or under the 2000 Regulations. This will cover Swiss nationals who have free movement rights under the Agreement between the European Community and the Swiss Confederation signed on 21st June 1999 (Cm 4904). *Regulation 2(4)* contains a consequential amendment and inserts a reference to new regulation 33 into regulation 9 of the 2000 Regulations.

6. *Regulation 3* sets out the transitional provisions for the introduction of the new appeals system in new Part VII of the 2000 Regulations. That system will not apply to appeals against decisions made before the coming into force of these Regulations, which will continue to be dealt with under the old appeals system.