

## **CHAPTER 13**

### **TRANSITIONAL ARRANGEMENTS**

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## 1 General Information

### Children's Duty

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

### Transitional Arrangements

Schedule 4 of the Immigration (EEA) Regulations 2006 sets out transitional provisions to ensure a smooth transition between the 2006 Regulations and the Immigration (EEA) Regulations 2000, which were replaced by the 2006 Regulations on 30 April 2006.

The transitional provisions relate to:

- Applications for EEA family permits, residence permits, residence documents and permanent residence under the 2000 Regulations,
- Removal actions and deportation orders under the 2000 Regulations, and
- Appeals under the 2000 Regulations.

## 2 Existing documents

Under Schedule 4, paragraph 2 of the Immigration (EEA) Regulations 2006:

- An **EEA family permit** issued under the 2000 Regulations shall, after 29 April 2006, be treated as if it were an EEA family permit issued under the 2006 Regulations.
- Subject to what is said below, a **residence permit** issued under the 2000 Regulations shall, after 29 April 2006, be treated as if it were a **registration certificate** issued under the 2006 Regulations
- Subject to what is said below, a **residence document** issued under the 2000 Regulations shall, after 29 April 2006, be treated as if it were a **residence card** issued under the 2006 Regulations.
- Where a **residence permit** issued under the 2000 Regulations has been endorsed to **show permission to remain in the UK indefinitely** it shall, after

29 April 2006, be treated as if it were a **document certifying permanent residence** issued under the 2006 Regulations and the holder of the permit shall be treated as a person with a permanent right of residence under regulation 15 of the 2006 Regulations.

- Where a **residence document** issued under the 2000 Regulations has been endorsed to show **permission to remain in the UK indefinitely** it shall, after 29 April 2006, be treated as if it were a **permanent residence card** issued under the 2006 Regulations and the holder of the document shall be treated as a person with a permanent right of residence under regulation 15 of the 2006 Regulations.

### 3 Outstanding applications

An application for an EEA family permit, a residence permit or a residence document made but not determined before 30<sup>th</sup> April 2006 should be treated as an application under the 2006 Regulations for an EEA family permit, a registration certificate or a residence card, respectively.

However, there are certain provisions of the new Regulations that do not apply to the determination of an application made before 30<sup>th</sup> April, namely:

- (a) the requirement to issue a registration certificate immediately under regulation 16(1), and
- (b) the requirement to issue a certificate of application for a residence card under regulation 17(3).

#### 3.1 Permanent residence

An application under paragraph 255 of the immigration rules for permanent residence made but not determined before 30 April 2006 can, under transitional provisions in the immigration rules, continue to be determined under paragraph 255. If the application is successful and the applicant's residence permit or residence document is endorsed to show permanent residence, the residence permit is treated as a document certifying permanent residence and the residence document is treated as a permanent residence card. It is important to verify that the person **would have qualified before 30 April** in order to benefit from this provision.

Example 1 - an EEA national applies for permanent residence (under the Immigration Rules) on 29<sup>th</sup> April 2006. He **qualifies** (based on the 4 year rule); however, the decision is made on 23<sup>rd</sup> May 2006. His residence permit is endorsed under the rules and is treated as a document certifying permanent residence under the 2006 Regulations .

Example 2 – an EEA national applies for permanent residence (under the Immigration Rules) on 29<sup>th</sup> April 2006. He **does not qualify** (as he has not exercised Treaty rights for the full 4 years) and is refused *without a right of appeal*. He should be informed in his refusal letter that if he reapplies, he should do so after 5 years of cumulative residence in accordance with the 2000 Regulations and the 2006 Regulations, when he will be entitled to a document certifying permanent residence.

He would only get a right of appeal when he applies under the 2006 Regulations, if the application is refused.

**Students – did not qualify for settlement under the 2000 Regulations, however:**

Under the 2000 Regulations, a student would not qualify for permanent residence but under the 2006 Regulations s/he will. Where a student has been in the UK for 4 years before 30 April and 1 year after, s/he should be allowed to consider these years under the old Regulations to count towards his/her 5 year qualifying period.

#### **4 Decisions to remove under the 2000 Regulations**

##### **4.1 The EEA national is not a qualified person**

A decision to remove an EEA national or his/her family member under regulation 21(3)(a) of the 2000 Regulations should, after 29 April 2006, be treated as a decision to remove him/her under regulation 19(3)(a) of the new Regulations.

##### **4.2 On the grounds of public policy, public security or public health**

A decision to remove an EEA national or his/her family member under regulation 21(3)(b) of the 2000 Regulations (including a decision made by virtue of regulation 6(3)(a) of the Accession Regulations) should, after 29 April 2006, be treated as a decision to remove that person under regulation 19(3)(b) of the new Regulations.

##### **4.3 Based on an existing deportation order**

A deportation order made under section 5 of the 1971 Act by virtue of regulation 26(3) of the 2000 Regulations shall, after 29 April 2006, be treated as a deportation order made under section 5 of the 1971 Act by virtue of regulation 24(3) of the new Regulations.

#### **5 Appeals**

##### **5.1 Pending appeals**

Where an appeal against an EEA Decision under the 2000 Regulations is pending immediately before 30 April 2006, that appeal should be treated as a pending appeal against the corresponding EEA Decision under the new Regulations.

##### **5.2 Determined, withdrawn or abandoned appeals**

Where an appeal against an EEA Decision under the 2000 Regulations has been determined, withdrawn or abandoned it should, on and after 30 April 2006, be treated as an appeal against the corresponding EEA Decision under the new Regulations which has been determined, withdrawn or abandoned, respectively.

For the purpose of section 5 of this chapter –

- a decision to **refuse to admit** an EEA national or his/her family member under the new Regulations corresponds to a decision to refuse to admit that person under the 2000 Regulations;
- **not a qualified person** - a decision to remove an EEA national or his/her family member under regulation 19(3)(a) of the new Regulations corresponds to a decision to remove that person under regulation 21(3)(a) of the 2000 Regulations;
- **public policy, security or health** - a decision to remove a person under regulation 19(3)(b) of the new Regulations corresponds to a decision to remove that person under regulation 21(3)(b) of the 2000 Regulations, (including a decision made by virtue of regulation 6(3)(a) of the Accession Regulations);

- a decision to refuse to **revoke a deportation order** made against a person under the new Regulations corresponds to a decision to refuse to revoke a deportation made against that person under the 2000 Regulations, (including a decision made by virtue of regulation 6(3)(b) of the Accession Regulations);
- a decision **not to issue or renew or to revoke an EEA family permit, a registration certificate or a residence card** under the new Regulations corresponds to a decision not to issue or renew or to revoke an EEA family permit, a residence permit or a residence document under the 2000 Regulations, respectively.

*For more information on transitional provisions and appeals, please refer to Chapter 9.8.*

## **6 Periods of residence under the 2000 Regulations**

Any period during which a person carried out an activity or was resident in the United Kingdom in accordance with the 2000 Regulations shall be treated as a period during which the person carried out that activity or was resident in the United Kingdom in accordance with the new Regulations for the purpose of calculating periods of activity and residence under the new Regulations.

Example 3 - An EEA national applies for a document certifying permanent residence in April 2007 (having been in the UK for 5 years in accordance with the 2000 Regulations and the 2006 Regulations). He qualifies under the 2006 Regulations. This would be based on 4 years under the 2000 Regulations and 1 year under the 2006 Regulations.