ILPA Information sheet

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European Economic Area (EEA) Regulations: Croatian nationals; family members of EEA nationals, appeals; sickness insurance

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The Immigration (European Economic Area) (Amendment) Regulations 2015 (Statutory Instrument 2015 No. 694), came into effect 6 April 2015. This note explains the impact of these on the free movement of EEA nationals in the UK.

Croatian nationals working in the UK

Croatians are able to move and reside freely in any European Union (EU) member state. A Croatian national who wishes to work in the UK is subject to the worker authorisation requirement and must obtain permission to work in the form of an accession worker authorisation document, before starting work. It is a rule of European free movement law that nationals of a State which joins the EEA must be no less free to move after their State joins the EEA than they would have been before. Another rule is that they must be treated no less favourably than non EEA nationals. Therefore, each time a provision of the immigration rules changes, equivalent provision must be made in the work authorisation scheme for EEA nationals.

The Immigration (European Economic Area) (Amendment) Regulations 2015 amended some of the rules governing the employment of Croatian nationals to increase their access to the labour market. First they reflect changes made to the Immigration Rules which apply to those seeking to enter or remain under Tier 1 (Exceptional Talent) which is for highly skilled workers endorsed by a professional body. The changes ensure that those Croatian nationals who are subject to the worker authorisation scheme and are highly skilled, are able to be endorsed by the wider range of competent bodies (e.g the Royal Society, The Royal Academy of Engineering) which can endorse persons under Tier 1 (Exceptional talent). The changes also mean that Croatian nationals are now able to work as student union sabbatical officers.

Non- EEA family members of EEA nationals travelling to the UK

Under the EU free movement ("Citizenship") Directive, which regulates the movement of EEA nationals and their family members, non-EEA family members of EEA nationals are allowed to travel between EU Member States as long as they hold a 'residence card' issued by another EU Member State confirming their status as a the non- EEA family member of an EEA national. In the UK this was interpreted very restrictively and for a long time, in practice, having a residence card was been enough to exempt non-EU family members from requiring a visa or an 'EEA family permit' to enter the UK. A family permit is a free visa that a person can apply for prior to coming to the UK to prove that they are the family member or 'extended' family member of an EEA national.

The Court of Justice of the European Union ruled in the case of *Sean Ambrose McCarthy* (Case c-202/13) that the UK was breaching EU law by imposing these restrictions. The Immigration (European Economic Area) (Amendment) Regulations 2015 gave effect to this judgment by amending the definition of "qualifying EEA State residence card" to encompass cards issued by any EEA Member State, meaning that being in possession of a residence card issued by *any* EEA Member State, should be enough for a non-EEA family member of an EEA national to be allowed entry into the UK.

Appeals

The 2014 Immigration Act significantly altered the rights of appeal to the First-tier Tribunal (Immigration and Asylum Chamber). It is now only possible to appeal under the Act against the refusal of a human rights claim, a protection claim (humanitarian protection and asylum) and revocation of refugee or humanitarian protection status. Appeals against EEA decisions are dealt with in regulations. The Immigration (European Economic Area) (Amendment) Regulations 2015 provide for a right of appeal against an EEA decision. The sole ground of appeal permitted is that the decision breaches the appellant's rights under the EU treaties in respect of entry to or residence in the United Kingdom. There is an opportunity to raise asylum and human rights grounds using the "section 120" notice procedure as amended by the Immigration Act 2014. This is a procedure for an appellant to provide any further reasons for wishing to remain in the UK or any further grounds on which they wish to rely to argue that they should not be required to leave the UK.

Family members of a student need comprehensive sickness insurance

The Immigration (European Economic Area) (Amendment) Regulations 2015 provide that the family members of a student, as well as the student him/herself must have comprehensive sickness insurance to enjoy a right to reside in the United Kingdom with the student.