

Regulations made by the Secretary of State, laid before Parliament under paragraph 5(3) of Schedule 7 to the European Union (Withdrawal) Act 2018 for approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution or prorogation, or adjournment for more than four days.

STATUTORY INSTRUMENTS

2019 No. 1383

EXITING THE EUROPEAN UNION

IMMIGRATION

The Immigration (Amendment) (EU Exit) Regulations 2019

Made - - - - at 8.40 a.m. on 24th October 2019

Laid before Parliament at 2.30 p.m. on 24th October 2019

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

The Secretary of State is of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft being laid and approved by each House of Parliament (b).

Citation and commencement

1.—(1) These Regulations may be cited as the Immigration (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day except for—

- (a) regulation 2(5), (10) and (12) which come into force on the later of 6th January 2020 or exit day; and
- (b) regulation 3 which comes into force immediately before exit day.

Amendment of the Immigration (European Economic Area) Regulations 2016

2.—(1) The Immigration (European Economic Area) Regulations 2016(c) are amended as follows.

(2) In regulation 2 (general interpretation), after the definition of “residence card” insert—
““residence scheme immigration rules” means—

(a) 2018 c. 16.

(b) See paragraph 5(2) of Schedule 7 to the European (Withdrawal) Act 2018.

(c) S.I. 2016/1052; amended by S.I. 2017/1, 2017/1242, 2018/801, 2019/468, 2019/745 and 2019/1155.

- (a) Appendix EU to the immigration rules^(a) except those rules, or changes to that Appendix, which are identified in the immigration rules as not having effect in connection with the residence scheme that operates in connection with the withdrawal of the United Kingdom from the European Union, and
 - (b) any other immigration rules which are identified in the immigration rules as having effect in connection with the withdrawal of the United Kingdom from the European Union;”.
- (3) In regulation 7(4) (“family member”), omit all of the words after “national”.
- (4) Regulation 9 (family members and extended family members of British citizens) is omitted.
- (5) In regulation 11 (right of admission to the United Kingdom)—
- (a) omit sub-paragraph (2)(a) and the “or” at the end of that sub-paragraph;
 - (b) in paragraph (3) for “, a permanent residence card or a qualifying EEA State residence card” substitute “or a permanent residence card”;
 - (c) omit paragraph (4).
- (6) After regulation 15 (right of permanent residence) insert—

“No right of permanent residence for admissions after EU exit

15A.—(1) A person who is admitted to the United Kingdom at or after the time this regulation comes into force cannot acquire a right of permanent residence under regulation 15 unless they fall within paragraph (2).

(2) A person falls within this paragraph if they are an EEA national or are the family member or extended family member of an EEA national and—

- (a) they were lawfully resident in the United Kingdom under these Regulations immediately before the time that this regulation comes into force, or
- (b) they have leave to enter or remain in the United Kingdom which was granted by virtue of residence scheme immigration rules.

(3) A person is to be treated as resident for the purposes of sub-paragraph (2)(a) at any time which would be taken into account for the purposes of calculating periods when the person was continuously resident under regulation 3.”.

(7) In regulation 16(7A) (derivative right to reside), for “Appendix EU to the immigration rules” substitute “residence scheme immigration rules”.

(8) Regulation 22(7) (verification of a right of residence), is omitted.

(9) After regulation 27 (decisions taken on grounds of public policy, public security and public health), insert—

“Decisions taken on conducive grounds

27A.—(1) Subject to paragraphs (2) and (3), an EEA decision may be taken on the ground that it is conducive to the public good.

(2) A decision may only be taken under this regulation in relation to a person who falls within paragraph (4) as a result of post-commencement conduct.

(3) A decision may only be taken under this regulation in relation to a person who falls within paragraph (5) as a result of pre-commencement conduct if the condition in paragraph (6) is satisfied.

(4) A person falls within this paragraph if they are—

(a) Laid before Parliament on 23rd May 1994 (HC 395), as amended. Appendix EU was laid before Parliament on 20th July 2018 (CM 9675).

- (a) a national of Iceland, Liechtenstein, Norway or Switzerland or the family member of such a national and —
 - (i) they were lawfully resident in the United Kingdom under these Regulations immediately before the time that this regulation comes into force, or
 - (ii) they have leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules.
- (5) A person falls within this paragraph if they are an EEA national (other than a national of Iceland, Liechtenstein, Norway or Switzerland), or are the family member of such an EEA national, and—
 - (a) they were lawfully resident in the United Kingdom under these Regulations immediately before the time that this regulation comes into force, or
 - (b) they have leave to enter or remain in the United Kingdom under residence scheme immigration rules.
- (6) The condition in this paragraph is that the person has been convicted of an offence that did not consist of or include pre-commencement conduct and was sentenced to a period of imprisonment.
- (7) A person is to be treated as resident for the purposes of paragraphs (4)(a)(i) or (5)(a) at any time which would be taken into account for the purposes of calculating periods when the person was continuously resident under regulation 3.
- (8) In this regulation—
 - “period of imprisonment” does not include a reference to a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);
 - “pre-commencement conduct” means conduct that took place at or before the time that this regulation comes into force;
 - “post-commencement conduct” means conduct that takes place after the time that this regulation comes into force.”.
- (10) In regulation 29(1) (person claiming right of admission)—
 - (a) after paragraph (a)(iii) insert “or”;
 - (b) omit paragraph (a)(v) and the “or” immediately before that sub-paragraph.
- (11) In regulation 36(6) (appeal rights)—
 - (a) in the opening words, for “regulation 9 (family members or extended family members of British citizens),” substitute “regulation 9 (family members or extended family members of British citizens) or under regulation 4 (saving provision in relation to family members and extended family members of British citizens) of the Immigration (Amendment) (EU Exit) Regulations 2019,”;
 - (b) in sub-paragraph (c)(ii)(aa), after “regulation 9(1A)(b)” insert “(as continued in force by regulation 4 of the Immigration (Amendment) (EU Exit) Regulations 2019)”.
- (12) In Schedule 3 (effect on other legislation), in paragraph 3 omit “, a qualifying EEA State residence card,”.
- (13) In Schedule 7 (consequential modifications)—
 - (a) in paragraph 1, after sub-paragraph (3) insert—
 - “(4) In this paragraph references to these Regulations are to these Regulations as last amended by the Immigration (Amendment) (EU Exit) Regulations 2019.”;
 - (b) in the table at the end of paragraph 1, omit the entries in relation to regulation 9 and regulation 11.

Amendment of the Immigration, Nationality and Asylum (EU Exit) Regulations 2019

3.—(1) The Immigration, Nationality and Asylum (EU Exit) Regulations 2019(a) are amended as follows.

(2) In regulation 43 (amendment of the Immigration (European Economic Area) Regulations 2016)—

- (a) omit paragraph (9);
- (b) for paragraph (14) substitute—

“(14) In Schedule 7 (consequential modifications), in the table at the end of paragraph 1, in the second column (corresponding provision in the 2016 Regulations), for “24(7)” substitute “24(1) to (6)”.”.

(3) In regulation 49 (disapplication of rights etc)—

- (a) for paragraph (2) substitute—

“(2) A decision is relevant for the purposes of paragraph (1) if —

- (a) it restricts or removes the ability of a person to enter or remain in the United Kingdom; and
- (b) it satisfies the condition in paragraph (2A) or (2B).

(2A) The condition in this paragraph is that the decision is made in respect of a person who did not have entry clearance, limited leave to enter or limited leave to remain in the United Kingdom by virtue of the EC Association Agreement with Turkey immediately before the time that this regulation comes into force.

(2B) The condition in this paragraph is that the decision is made in respect of a person who had entry clearance, limited leave to enter or limited leave to remain in the United Kingdom by virtue of the EC Association Agreement with Turkey immediately before the time that this regulation comes into force and—

- (a) is taken as a result of post-commencement conduct; or
- (b) if the person has been convicted of an offence that did not consist of or include pre-commencement conduct and has been sentenced to a period of imprisonment.”;

- (b) in paragraph (3) for “the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963” substitute “the EC Association Agreement with Turkey”;

- (c) after paragraph (3) insert—

“(4) In this regulation—

“period of imprisonment” does not include a reference to a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);

“pre-commencement conduct” means conduct that took place at or before the time that this regulation comes into force;

“post-commencement conduct” means conduct that takes place after the time that this regulation comes into force;

“the EC Association Agreement with Turkey” means the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963.”.

(a) S.I. 2019/745.

Saving provision in relation to family members and extended family members of British citizens

- 4.—(1) Notwithstanding the amendments made by regulation 2(3) and (4)—
- (a) the 2016 Regulations continue to apply to a family member or extended family member of a British citizen as though the British citizen were an EEA national where the 2016 Regulations applied to that person by virtue of regulation 9 of those Regulations immediately before commencement day;
 - (b) the 2016 Regulations apply to a family member or extended family member of a British citizen as though the British citizen were an EEA national where—
 - (i) the British citizen was resident in an EEA State on commencement day;
 - (ii) they are a family member or extended family member of the British citizen at the time that the British citizen returns to the United Kingdom; and
 - (iii) at the time that the British citizen returns to the United Kingdom and, if different, the time that they seek admittance to the United Kingdom, they satisfy the conditions in regulation 9(2) of the 2016 Regulations (as it had effect immediately before commencement day).

(2) In this regulation—

“2016 Regulations” means the Immigration (European Economic Area) Regulations 2016 as amended by these Regulations;

“commencement day” means the date and time on which regulation 2(4) comes into force;

“EEA State” has the same meaning as in regulation 2 of the 2016 Regulations;

“extended family member” has the same meaning as in regulation 8 of the 2016 Regulations (read with regulations 7 and 9 of those Regulations as regulations 7 and 9 had effect immediately before commencement day);

“family member” has the same meaning as in regulation 7 of the 2016 Regulations (read with regulations 8 and 9 of those Regulations as regulations 8 and 9 had effect immediately before commencement day).

Brandon Lewis
Minister of State
Home Office

8.40 a.m. on 24th October 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”), in order to address deficiencies in retained EU law arising from withdrawal of the United Kingdom from the EU (in particular section 8(2)(c) and (d)). They also make consequential and saving provision under paragraph 21 of Schedule 7 to the 2018 Act.

These Regulations make amendments to legislation in the field of immigration and in particular amend the Immigration (European Economic Area) Regulations 2016 S.I 2016/1052 (“the 2016 Regulations”). In particular:

Regulation 2(4) omits regulation 9 of the 2016 Regulations to remove provision for the 2016 Regulations to apply to a family member or extended family member of a British citizen where that British citizen has exercised EU Treaty rights in an EEA State. Regulations 2(3) and (11) make provision consequential on that change. Regulation 4 sets out saving provisions so that the position of a person who qualified under this route prior to commencement of this amendment is

protected. It also makes provision for the 2016 Regulations to continue to apply to family members and extended family members of British citizens living in an EEA State at the time that these provisions commence who return to the United Kingdom after that date.

Regulations 2(5), (10) and (12) have the effect that residence cards issued to third country national family members of EEA nationals by EEA States under articles 10 or 20 of Directive 2004/38/EC will no longer be valid for admission to the UK. Further, EEA nationals and their family members who do not produce on arrival the required documentation (a valid EEA passport or national identity card for an EEA national; a valid passport and valid EEA family permit or UK-issued residence card for a third country national family member) will no longer be able to establish a right of admission by other means or be given an opportunity to be brought these documents.

Regulation 2(6) inserts a new regulation 15A into the 2016 Regulations. This amendment has the effect that a person who arrives in the United Kingdom after this amendment comes into force will not be able to acquire permanent residence under regulation 15 of the 2016 Regulations. But this does not apply to (a) a person outside of the United Kingdom on that date who was lawfully resident in the United Kingdom under the 2016 Regulations immediately before then or (b) a person who has leave to enter or remain granted by virtue of the EU Settlement Scheme.

Regulation 2(8) revokes the restriction on systemic verification of rights of residence under the 2016 Regulations.

Regulation 2(9) makes provision enabling an EEA decision to be taken on the ground that it is conducive to the public good. But a decision may not be taken on non-conducive grounds in respect of nationals from Iceland, Liechtenstein, Norway and Switzerland and their family members in relation to pre-commencement conduct if they were lawfully resident in the United Kingdom under the 2016 Regulations immediately before this amendment comes into force or have leave granted by virtue of the EU Settlement Scheme. A decision may not be taken on non-conducive grounds in relation to pre-commencement conduct in relation to any other EEA national or their family members if they were lawfully resident in the United Kingdom under the 2016 Regulations immediately before this amendment comes into force or have leave under the EU Settlement Scheme, unless that person has been convicted of an offence and received a custodial sentence in relation to post-commencement conduct (“pre-commencement conduct” and “post-commencement conduct” are defined in new regulation 27A(8)). Regulation 3 makes comparable provision in relation to the Agreement establishing an Association between the European Economic Community and Turkey.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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