STATUTORY INSTRUMENTS

2016 No. 1052

IMMIGRATION

[F1The Immigration (European Economic Area) Regulations 2016

Made - - - - 2nd November 2016

Laid before Parliament 3rd November 2016

Coming into force in accordance with regulation 1(2)

The Secretary of State, being a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred by that section and those conferred by section 109 of the Nationality, Immigration and Asylum Act 2002(**3**), makes the following Regulations.

F1 Regulations revoked (31.12.2020) by Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20), s. 9(1), **Sch. 1 para. 2(2)** (with s. 4(2)); S.I. 2020/1279, reg. 4(c) (with savings and modifications in: S.I. 2020/1209, regs. 3(1)(2), 4(1)-(3), 5-10 in relation to a relevant person for the purposes of final determination of applications during the grace period; S.I. 2020/1210, reg. 2, Sch. for the purpose of removing a person who is protected by the citizens' rights provisions; S.I. 2020/1309, Sch. 3 paras. 1-6 in relation to deportation and exclusion orders, pending applications for documentation and existing appeal rights and appeals; and S.I. 2020/1309, Sch. 4 paras. 1, 2, 4 in relation to access to benefits and services for persons who are members of the post-transition period group)

Modifications etc. (not altering text)

C1 Regulations extended (with modifications) (31.3.2021) by S.I. 2003/2818, art. 11(1)(e), Sch. 2 (as amended by The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021 (S.I. 2021/311), **art. 2(7)(e)**)

C2 Regulations extended (with modifications) (31.3.2021) by S.I. 2003/2818, art. 11(1), Sch. 2 (as amended by The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021 (S.I. 2021/311), arts. 1(2), **2(7)(e)(i)(ii)**)

(**1**) S.I. 2000/1813.
(**2**) 1972 c. 68.
(**3**) 2002 c. 41.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Immigration (European Economic Area) Regulations 2016.

(2) These Regulations come into force—

(a) for the purposes of this regulation, regulation 44 and Schedule 5 (transitory provisions), on 25th November 2016;

(b) for all other purposes, on 1st February 2017.

General interpretation

2.—(1) In these Regulations—

"the 1971 Act" means the Immigration Act 1971(**4**);

"the 1999 Act" means the Immigration and Asylum Act 1999(**5**);

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002;

"the 2006 Regulations" means the Immigration (European Economic Area) Regulations 2006(**6**);

[[F2]"the 2016 Act" means the Immigration Act 2016;**]**

"civil partner" does not include—

(a) a party to a civil partnership of convenience; or

(b) the civil partner ("C") of a person ("P") where a spouse, civil partner or durable partner of C or P is already present in the United Kingdom;

"civil partnership of convenience" includes a civil partnership entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent—

(a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or

(b) any other criteria that the party to the civil partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

"Common Travel Area" has the meaning given in section 1(3) of the 1971 Act;

"decision maker" means the Secretary of State, an immigration officer or an entry clearance officer (as the case may be);

"deportation order" means an order made under regulation 32(3);

"derivative residence card" means a card issued to a person under regulation 20;

"derivative right to reside" means a right to reside under regulation 16;

"document certifying permanent residence" means a document issued under regulation 19(1);

"durable partner" does not include—

(**4**) 1971 c. 77.
(**5**) 1999 c. 33.
(**6**) S.I. 2006/1003 as amended by the Immigration Act 2014 (c. 22), Schedule 1, paragraph 2(5), and S.I. 2006/3317, 2009/1117, 2010/21, 708, 1593, 2011/544, 1247, 2012/1547, 1809, 2560, 2013/1391, 1460, 3032, 2014/1451, 1976, 2761, and 2015/694.

(a) a party to a durable partnership of convenience; or

(b) the durable partner ("D") of a person ("P") where a spouse, civil partner or durable partner of D or P is already present in the United Kingdom and where that marriage, civil partnership or durable partnership is subsisting;

"durable partnership of convenience" includes a durable partnership entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent—

(a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or

(b) any other criteria that the party to the durable partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

"EEA decision" means a decision under these Regulations that concerns—

(a) a person's entitlement to be admitted to the United Kingdom;

(b) a person's entitlement to be issued with or have renewed, or not to have revoked, **[**F3an EEA family permit,**]** a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card (but does not include **[**F4a decision to reject an application for the above documentation as invalid**]**);

(c) a person's removal from the United Kingdom; or

(d) the cancellation, under regulation 25, of a person's right to reside in the United Kingdom,

but does not include F5... a decision to **[**F6refuse**]** an application under regulation 26(4) (misuse of a right to reside: material change of circumstances), or any decisions under regulation 33 (human rights considerations and interim orders to suspend removal) or 41 (temporary admission to submit case in person);

"EEA family permit" means a document issued under regulation 12;

[F7"EEA national" means—

(a) a national of an EEA State who is not also a British citizen; or

(b) a national of an EEA State who is also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national, in accordance with regulation 14 or 15,

save that a person does not fall within paragraph (b) if the EEA State of which they are a national became a member State after that person acquired British citizenship.**]**

"EEA State" means—

(a) a member State, other than the United Kingdom; or

(b) Liechtenstein, Iceland, Norway or Switzerland;

"entry clearance" has the meaning given in section 33(1) of the 1971 Act(**7**);

"entry clearance officer" means a person responsible for the grant or refusal of entry clearance;

"exclusion order" means an order made under regulation 23(5);

"indefinite leave", "immigration laws" and "immigration rules" have the meanings given in section 33(1) of the 1971 Act;

"marriage of convenience" includes a marriage entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent—

(**7**) The relevant part of section 33(1) was amended by the British Nationality Act 1981(c. 61), Schedule 4, paragraph 2, and the Immigration Act 1988 (c. 14), the Schedule, paragraph 5.

(a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or

(b) any other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

"military service" means service in the armed forces of an EEA State;

"permanent residence card" means a document issued under regulation 19(2);

"qualifying EEA State residence card" means a valid document called a "Residence card of a family member of a Union Citizen" issued under Article 10 of Council Directive 2004/38/EC(**8**) (as applied, where relevant, by the EEA agreement) by any EEA State (except Switzerland) to a non-EEA family member of an EEA national as proof of the holder's right of residence in that State;

"registration certificate" means a certificate issued under regulation 17;

"relevant EEA national" in relation to an extended family member has the meaning given in regulation 8(6);

"residence card" means a card issued under regulation 18;

"right to reside" means a right to reside in the United Kingdom under these Regulations (or where so specified, a right to reside under a particular regulation);

"spouse" does not include—

(a) a party to a marriage of convenience; or

(b) the spouse ("S") of a person ("P") where a spouse, civil partner or durable partner of S or P is already present in the United Kingdom.

(2) Section 11 of the 1971 Act (construction of references to entry)(**9**) applies for the purpose of determining whether a person has entered the United Kingdom for the purpose of these Regulations as it applies for the purpose of determining whether a person has entered the United Kingdom for the purpose of that Act.

F2 Words in reg. 2 inserted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 8(2)**

F3 Words in reg. 2(1) inserted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(2)(a)(i)**

F4 Words in reg. 2(1) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(2)(a)(ii)**

F5 Words in reg. 2(1) omitted (28.3.2019) by virtue of The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 (S.I. 2019/468), regs. 1(2), **3(2)**

F6 Word in reg. 2(1) substituted (15.8.2019) by The Immigration (European Economic Area) (Amendment) Regulations 2019 (S.I. 2019/1155), regs. 1, **2(2)(b)**

F7 Words in reg. 2(1) substituted (24.7.2018) by The Immigration (European Economic Area) (Amendment) Regulations 2018 (S.I. 2018/801), reg. 1(2), **Sch. para. 1**

Modifications etc. (not altering text)

C3 Reg. 2 continued (with modifications) (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), **Sch. 3 paras. 4-6**

C4 Reg. 2 continued (with modifications) (31.12.2020) by The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 (S.I. 2020/1210), regs. 1(1), 2, **Sch. para. 2**

(**8**) OJ No L 158, 30.4.04, p98.
(**9**) Section 11 was amended by the 2002 Act, section 62(8), and S.I 1993/1813 and 2003/1016.

C5 Reg. 2 continued (with modifications) (31.12.2020) by The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (S.I. 2020/1209), regs. 1(1), **3(1)**(2), 4(1)-(3), 5

C6 Reg. 2 continued (with modifications) (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), Sch. 4 paras. 1, 2, **4**

Continuity of residence

3.—(1) This regulation applies for the purpose of calculating periods of continuous residence in the United Kingdom under these Regulations.

(2) Continuity of residence is not affected by—

(a) periods of absence from the United Kingdom which do not exceed six months in total in any year;

(b) periods of absence from the United Kingdom on compulsory military service; or

(c) one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

(3) Continuity of residence is broken when—

(a) a person serves a sentence of imprisonment;

(b) a deportation or exclusion order is made in relation to a person; or

(c) a person is removed from the United Kingdom under these Regulations.

(4) Paragraph (3)(a) applies, in principle, to an EEA national who has resided in the United Kingdom for at least ten years, but it does not apply where the Secretary of State considers that—

(a) prior to serving a sentence of imprisonment, the EEA national had forged integrating links with the United Kingdom;

(b) the effect of the sentence of imprisonment was not such as to break those integrating links; and

(c) taking into account an overall assessment of the EEA national's situation, it would not be appropriate to apply paragraph (3)(a) to the assessment of that EEA national's continuity of residence.

Modifications etc. (not altering text)

C7 Reg. 3 continued (31.12.2020) by The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (S.I. 2020/1209), regs. 1(1), **3(1)**(2), 4(1)-(3), 5

C8 Reg. 3 continued (with modifications) (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), **Sch. 3 paras. 4-6**

C9 Reg. 3 continued (with modifications) (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), reg. 1(2), Sch. 4 paras. 1, 2, **4**

"Worker", "self-employed person", "self-sufficient person" and "student"

4.—(1) In these Regulations—