*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 4 to the European Union (Withdrawal Agreement) Act 2020, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2020 No

# EXITING THE EUROPEAN UNION
# IMMIGRATION

## The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

*Made - - - - 2020*

*Coming into force in accordance with regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 7(1) and (4) of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020(**1**).

These are the first regulations to be made under paragraphs (b), (c), (d), (e), (f) and (g) of section 7(1) of that Act. In accordance with paragraph 1(1) of Schedule 4 to that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

## PART 1

## Preliminary

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 and come into force on IP completion day(**2**).

(2) In these Regulations—

"the EEA Regulations 2016" mean the Immigration (European Economic Area) Regulations 2016(**3**);

"application deadline" has the meaning given in regulation 2.

(**1**) 2020 c. 1.
(**2**) "IP completion day" is defined in section 39 of the European Union (Withdrawal Agreement) Act 2020.
(**3**) S.I. 2016/1052; amended by S.I. 2017/1, S.I. 2017/1242, S.I. 2018/801, S.I. 2019/1383, S.I. 2019/468, S.I. 2019/745 (amendments not in force; due to come into force on IP completion day) and S.I. 2019/1155.

# PART 2

## Deadline for applications

**Deadline for applications**

**2.** The end of 30 June 2021 is the deadline for submission of an application for residence status ("application deadline") that applies for the purposes of the following provisions—

(a) the first sub-paragraph of Article 18(1)(b) of the withdrawal agreement(**4**);

(b) the first sub-paragraph of Article 17(1)(b) of the EEA EFTA separation agreement(**5**), and

(c) the first sentence of Article 16(1)(b) of the Swiss citizens' rights agreement(**6**).

# PART 3

## Saving of the EEA Regulations 2016 etc. during the grace period and whilst applications are finally determined

**Grace period**

**3.**—(1) This regulation has effect if the EEA Regulations 2016 are revoked on IP completion day (with or without savings).

(2) The provisions of the EEA Regulations 2016 specified in regulations 5 to 10 continue to have effect (despite the revocation of those Regulations) with the modifications specified in those regulations in relation to a relevant person during the grace period.

(3) The provisions specified in regulation 11 apply in relation to a relevant person during the grace period as if any reference to the EEA Regulations 2016 or any provision of those Regulations are to the Regulations or provision of the Regulations as continued in effect and modified by regulations 5 to 10.

(4) The enactments specified in regulation 12 apply in relation to a relevant person during the grace period with the modifications specified in that regulation.

(5) For the purposes of this regulation—

(a) the grace period is the period beginning immediately after IP completion day and ending with the application deadline;

(b) a person is to be treated as residing in the United Kingdom at any time which would be taken into account for the purposes of calculating periods when the person was continuously resident for the purposes of the EEA Regulations 2016 (see regulation 3);

(c) a person who does not have the right to reside in the United Kingdom permanently is to be treated as having such a right if the person had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15) and who, immediately before IP completion day, has been absent from the United Kingdom for a continuous period of 5 years or less (disregarding any period of absence before the person acquired the right of permanent residence).

(6) In this regulation—

"EEA document" means—

(**4**) Defined in section 39 of the European Union (Withdrawal Agreement) Act 2020.
(**5**) Defined in section 39 of the European Union (Withdrawal Agreement) Act 2020.
(**6**) Defined in section 39 of the European Union (Withdrawal Agreement) Act 2020.

(a) an EEA family permit issued under regulation 12 of the EEA Regulations 2016;

(b) a registration certificate issued under regulation 17 of those Regulations, or

(c) a residence card issued under regulation 18 of those Regulations;

"family member"—

(a) has the same meaning as in paragraph (1) of regulation 7 of the EEA Regulations 2016 (read with paragraph (2) of that regulation) as those Regulations had effect immediately before IP completion day, and

(b) includes an extended family member within the meaning of regulation 8 of those Regulations as they had effect immediately before IP completion day if that person—

(i) immediately before IP completion day satisfied the condition in regulation 8(5) of those Regulations (durable partner), or

(ii) holds a valid EEA document (regardless of whether that document was issued before or after IP completion day);

"relevant family member", in relation to a person ("P"), means a family member who—

(a) was a family member of P immediately before IP completion day;

(b) is P's child and—

(i) the child's other parent is a relevant person or has leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules(**7**);

(ii) the child's other parent is a British citizen;

(iii) P has sole or joint rights of custody of the child in the circumstances set out in the last point of Article 10(1)(e)(iii) of the withdrawal agreement or the last point of Article 9(1)(e)(iii) of the EEA EFTA separation agreement, or

(iv) P falls within Article 10(1)(e)(iii) of the Swiss citizens' rights agreement (children of beneficiaries of that agreement);

(c) becomes a family member of P after IP completion day by virtue of being issued with an EEA document (see paragraph (b)(ii) of the definition of "family member"), or

(d) is the spouse or civil partner of P and P is a national of Switzerland;

"relevant person" means a person who does not have (and who has not, during the grace period, had) leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules and who—

(a) immediately before IP completion day—

(i) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or

(ii) had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15), or

(b) is not a person who falls within sub-paragraph (a) but is a relevant family member of a person who immediately before IP completion day—

(i) did not have leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules, and

(ii) either—

(aa) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or

(**7**) Defined in section 17 of the European Union (Withdrawal Agreement) Act 2020.

(bb) had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15).

**Applications which have not been finally determined by the application deadline**

**4.**—(1) This regulation has effect if the EEA Regulations 2016 are revoked on IP completion day (with or without savings).

(2) This regulation applies to a person ("the applicant") who—

(a) has made an in-time application (see paragraph (6)), and

(b) immediately before IP completion day—

(i) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or

(ii) had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15).

(3) The provisions of the EEA Regulations 2016 specified in regulations 5 to 10 continue to have effect (despite the revocation of those Regulations) with the modifications specified in those regulations in relation to the applicant during the relevant period.

(4) The provisions specified in regulation 11 apply in relation to the applicant during the relevant period as if any reference to the EEA Regulations 2016 or any provision of those Regulations are to the Regulations or provision of the Regulations as continued in effect and modified by regulations 5 to 10.

(5) The enactments specified in regulation 12 apply in relation to the applicant during the relevant period with the modifications specified in that regulation.

(6) For the purposes of this regulation—

(a) an in-time application is an application for leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules which—

(i) is valid under residence scheme immigration rules;

(ii) is made on or before the application deadline, and

(iii) has not been withdrawn;

(b) the relevant period begins immediately after the application deadline and ends—

(i) if the applicant is, by virtue of the in-time application, granted leave to enter or remain in the United Kingdom, on the day on which that leave is granted;

(ii) if a decision is taken not to grant any leave to enter or remain in the United Kingdom in response to the applicant's application and the applicant does not appeal against that decision, on the first day on which the applicant is no longer entitled to appeal against that decision (ignoring any possibility of an appeal out of time with permission);

(iii) if a decision is taken not to grant any leave to enter or remain in the United Kingdom in response to the applicant's application and the applicant brings an appeal against that decision, on the day on which that appeal is finally determined, withdrawn or abandoned, or lapses under paragraph 3 of Schedule 1 to the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020(**8**);

(c) a person is to be treated as residing in the United Kingdom at any time which would be taken into account for the purposes of calculating periods when the person was continuously resident for the purposes of the EEA Regulations 2016 (see regulation 3);

(**8**) S.I. 2020/61.

(d) a person who does not have the right to reside in the United Kingdom permanently is to be treated as having such a right if the person had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15) and who, immediately before IP completion day, has been absent from the United Kingdom for a continuous period of 5 years or less (disregarding any period of absence before the person acquired the right of permanent residence).

(7) For the purposes of paragraph (6)(b)(iii)—

(a) an appeal is not finally determined while (as the case may be)—

(i) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007(**9**) could be made or is awaiting determination;

(ii) permission to appeal under either of those sections has been granted and the appeal is awaiting determination;

(iii) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination;

(iv) any of the following applications could be made—

(aa) an application for leave to appeal under section 7 of the applied 1997 Act;

(bb) an application for a certificate under section 7B of the applied 1997 Act(**10**);

(cc) an application for permission to appeal under section 7C of the applied 1997 Act, or

(v) leave to appeal under section 7, or permission to appeal under section 7C, of the applied 1997 Act has been granted and the appeal is awaiting determination;

(b) an appeal is to be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules;

(c) an appeal is not to be treated as abandoned solely because the appellant leaves the United Kingdom.

(8) For the purposes of paragraph (7), "the applied 1997 Act" means the Special Immigration Appeals Commission Act 1997(**11**) as it applies for the purposes of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 by virtue of Part 2 of Schedule 1 to those Regulations.

**Provisions relating to definitions etc.**

**5.** The following provisions of Part 1 of the EEA Regulations 2016 (provisions relating to definitions etc.) with the modifications set out below are specified for the purposes of regulations 3 and 4—

(a) regulation 2 (general interpretation) with the modifications that—

(i) all instances of the words "or any other right conferred by the EU Treaties"—

(aa) in so far as they relate to things done on or after exit day but before IP completion day, were a reference to a right conferred by the EU Treaties so far as they were applicable to and in the United Kingdom by virtue of Part 4 of the EU withdrawal agreement(**12**);

(bb) in so far as they relate to things done on or after IP completion day, were omitted;

(ii) all instances of the words "or the EU Treaties"—

(**9**) 2007 c. 15. There are amendments but none are relevant.
(**10**) Sections 7B to 7D were inserted by section 66 of the Criminal Justice and Courts Act 2015 (c. 2).
(**11**) 1997 c. 68.
(**12**) Part 4 of the withdrawal agreement provides for a transition period.