Draft Regulations laid before Parliament under paragraph 1(1)(a) 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 (Frontier Workers) (EU Exit) Regulations 2020

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8 and 11(1) of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020 ("the 2020 Act")(**1**) and section 9(2) of the Immigration Act 1971(**2**).

These are the first regulations to be made under section 8 of the 2020 Act. In accordance with paragraph 1(1)(a) 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 and commencement

1.—(1) These Regulations may be cited as the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

(2) These Regulations come into force on the day after the day on which they are made except—

(a) the provisions specified in paragraph (3) which come into force on IP completion day;

(b) the provisions specified in paragraph (4) which come into force on 1st July 2021.

(3) The provisions specified in this paragraph are—

(**1**) 2020 c. 1. See also paragraph 17 of Schedule 4 to that Act which provides for combination of instruments which would otherwise be subject to different Parliamentary procedures.

(**2**) 1971 c. 77. Relevant amendments to section 9 were made by paragraph 2 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(a) Part 2, except for the provisions specified in paragraph (4);

(b) Part 4;

(c) regulation 24 in so far as it relates to an appeal against a decision made under Part 2 or Part 4; and

(d) regulation 28.

(4) The provisions specified in this paragraph are regulations 6(1)(b) and 6(2).

Interpretation

2. In these Regulations—

"the 1971 Act" means the Immigration Act 1971;

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

"common travel area" has the same meaning as in section 1(3) of the 1971 Act (general principles);

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

"EEA national" means a national of an EEA state who is not also a British citizen;

"EEA state" means—

(a) a member State; or

(b) Iceland, Liechtenstein, Norway or Switzerland;

"exclusion direction" means a direction issued by the Secretary of State for a person not to be given entry to the United Kingdom on the grounds that the person's exclusion is conducive to the public good;

"frontier worker" has the meaning given in regulation 3;

"frontier worker permit" means a document which certifies a person's frontier workers' rights;

"frontier workers' rights" means the rights a person has as a frontier worker under Part 2 of the withdrawal agreement, Part 2 of the EEA EFTA separation agreement or Part 2 of the Swiss citizens' rights agreement(**4**);

"immigration officer" means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

"relevant restriction decision" means—

(a) an exclusion direction;

(b) a deportation order made by virtue of regulation 15(1)(b);

(c) an exclusion or deportation order made or treated as having been made by virtue of the 2016 Regulations, including those continued in effect by regulations made under section 7 or 9 of the European Union (Withdrawal Agreement) Act 2020; or

(d) a deportation order made by virtue of section 3 of the 1971 Act;

"required biometrics" means the biometric information required to be provided by the Immigration (Provision of Physical Data) Regulations 2006(**5**);

(**3**) S.I. 2016/1052. Amended by S.I. 2017/1, S.I. 2017/1242, S.I. 2018/801, S.I. 2019/468, S.I. 2019/745 (amendments not in force) and S.I. 2019/1155.
(**4**) These agreements are defined in section 39 of the European Union (Withdrawal Agreement) Act 2020.
(**5**) S.I. 2006/1743. Amended by S.I. 2015/737, S.I. 2018/928 and S.I. 2019/745.

"self-employed person" means a person who is established in the United Kingdom in order to pursue activity as a self-employed person within the meaning of Article 49 on the Treaty of the Functioning of the European Union(**6**);

"valid identity document" means—

(a) a valid national identity card issued by an EEA state; or

(b) a valid passport issued by an EEA state;

"worker" means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union.

Meaning of "frontier worker"

3.—(1) A person is a frontier worker for the purposes of these Regulations if they were, immediately before IP completion day, and have been continuously since IP completion day—

(a) an EEA national;

(b) not primarily resident in the United Kingdom; and

(c) either—

(i) a worker in the United Kingdom;

(ii) a self-employed person in the United Kingdom; or

(iii) a person treated as a worker or self-employed person in the United Kingdom by virtue of regulation 4.

(2) For the purposes of paragraph (1), it does not matter if a person changes from one of the statuses in paragraph (1)(c) to another.

(3) For the purposes of paragraph (1), a person is to be treated as not being primarily resident in the United Kingdom at a particular point in time ("the relevant date") if—

(a) they have been present in the United Kingdom for less than 180 days in the twelve-month period immediately before the day on which the relevant date falls; or

(b) they have returned to their country of residence at least—

(i) once in the six-month period immediately before the day on which the relevant date falls; or

(ii) twice in the twelve-month period immediately before the day on which the relevant date falls,

unless there are exceptional reasons for not having done so.

Retained worker or self-employed person status

4.—(1) A person who is no longer a worker in the United Kingdom is to be treated as such if the person, immediately following ceasing work in the United Kingdom—

(a) is temporarily unable to work as the result of an illness or accident;

(b) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided the person satisfies paragraph (5);

(c) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided the person satisfies paragraph (5);

(d) is in involuntary unemployment and has embarked on vocational training;

(**6**) OJ No C326, 26.10.12, p65.

(e) has voluntarily ceased working and has embarked on vocational training that is related to the person's previous employment; or

(f) is temporarily unable to work due to pregnancy or childbirth, provided the person satisfies paragraph (5) 12 months after ceasing work and thereafter.

(2) A person to whom paragraph (1)(c) applies may only retain worker status for a maximum of six months.

(3) A person who is no longer a self-employed person in the United Kingdom is to be treated as such if the person, immediately following ceasing self-employment in the United Kingdom—

(a) is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident;

(b) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for at least one year, provided the person satisfies paragraph (5);

(c) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for less than one year, provided the person satisfies paragraph (5);

(d) is involuntarily no longer in self-employment and has embarked on vocational training;

(e) has voluntarily ceased self-employment and has embarked on vocational training that is related to the person's previous occupation; or

(f) is temporarily unable to engage in activities as a self-employed person due to pregnancy or childbirth, provided the person satisfies paragraph (5) 12 months after ceasing self-employment and thereafter.

(4) A person to whom paragraph (3)(c) applies may only retain self-employed person status for a maximum of six months.

(5) A person satisfies this paragraph where they have provided evidence that they continue to seek employment or self-employment in the United Kingdom.

(6) A person may not retain the status of—

(a) a worker under paragraph (1)(b); or

(b) a self-employed person under paragraph (3)(b),

for longer than six months without providing compelling evidence of continuing to seek employment or self-employment in the United Kingdom.

PART 2

Frontier worker rights

Exemption from immigration control

5.—(1) Subject to paragraph (2), regulation 7 and Part 4 of these Regulations, a person does not require leave to enter or remain in the United Kingdom under the 1971 Act in any case in which that person is entitled to do so by virtue of their frontier workers' rights.

(2) This regulation does not apply to a person who is subject to a relevant restriction decision.

Right of admission

6.—(1) Subject to regulation 12, a frontier worker must be admitted to the United Kingdom on arrival if the frontier worker produces—

(a) a valid identity document; and

(b) a valid frontier worker permit.

(2) A frontier worker who is an Irish citizen is not required to produce a frontier worker permit.

Person claiming right of admission

7.—(1) This regulation applies to a person who claims a right of admission to the United Kingdom under regulation 6 where there is reason to believe—

(a) that regulation 12 applies to that person; or

(b) they are not entitled to be admitted under regulation 6.

(2) A person to whom this regulation applies is to be treated as if that person were a person seeking leave to enter the United Kingdom under the 1971 Act for the purposes of paragraphs 2, 3, 4, 7 and 16 to 18A of Schedule 2 to the 1971 Act (administrative provisions as to control on entry etc)(**7**) except that—

(a) the reference in paragraph 2(1) to the purpose for which the immigration officer may examine any persons who have arrived in the United Kingdom is to be read as a reference to the purpose of determining whether the person is to be granted admission under these Regulations;

(b) the reference in paragraph 3(1)(c) to the purpose for which the immigration officer may examine any persons embarking in the United Kingdom is to be read as a reference to the purpose of determining whether the person has exercised frontier workers' rights while in the United Kingdom;

(c) the reference in paragraph 7 to a person who is, or may be, given leave to enter are to be read as references to a person who is, or may be, granted admission under these Regulations;

(d) the reference in paragraph 16(1) to a decision to give or refuse leave to enter is to be read as a reference to a decision to grant or refuse admission under these Regulations; and

(e) a medical examination is not to be carried out under paragraph 2 or paragraph 7 as a matter of routine and may only be carried out within three months of the person's arrival in the United Kingdom.

(3) For so long as a person to whom this regulation applies is detained under the powers conferred by Schedule 2 to the 1971 Act, or granted bail under Schedule 10 to the Immigration Act 2016(**8**) whilst liable to be detained under the powers conferred by Schedule 2 to the 1971 Act, the person is deemed not to have been admitted to the United Kingdom.

(**7**) The relevant parts of Schedule 2 were amended by Schedule 6 to the Criminal Justice Act 1972 (c. 71), paragraphs 2 and 3 of Schedule 4 to the British Nationality Act 1981 (c. 61), paragraphs 6, 8, 9 and 10 of the Schedule to the Immigration Act 1988 (c. 14), paragraphs 5, 7, 10 and 11 of Schedule 2, and Schedule 4 to the Asylum and Immigration Act 1996 (c. 49), paragraph 70 of Schedule 13 to the Access to Justice Act 1999 (c. 22), section 140, paragraphs 43, 56 and 58 to 63 of Schedule 14, and Schedule 16 to the Immigration and Asylum Act 1999 (c. 33), sections 63, 64 and 73 of, and paragraphs 3 and 4 of Schedule 7 to, the Nationality, Immigration and Asylum Act 2002 (c. 41), paragraph 149 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 1 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), sections 27 and 42 of, and Schedule 3 to the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 5, 7, 9 and 13 of, paragraphs 1 and 2 of Schedule 1, paragraph 1 of Schedule 2, and paragraphs 1, 2 and 3 of Schedule 8 to the Immigration Act 2014 (c. 22), sections 46 and 60 of the Immigration Act 2016 (c. 19), and S.I. 2010/21.

(**8**) 2016 (c. 19).