
STATUTORY INSTRUMENTS

2016 No. 1052

The Immigration (European Economic Area) Regulations 2016

PART 2

EEA RIGHTS

Right of admission to the United Kingdom

11.—(1) An EEA national must be admitted to the United Kingdom on arrival if the EEA national produces a valid national identity card or passport issued by an EEA State.

(2) A person who is not an EEA national must be admitted to the United Kingdom if that person is—

- (a) a family member of an EEA national and produces on arrival a valid passport and qualifying EEA State residence card, provided the conditions in regulation 23(4) (family member of EEA national must accompany or join EEA national with right to reside) are met; or
- (b) a family member of an EEA national, a family member who has retained the right of residence, a person who meets the criteria in paragraph (5) or a person with a right of permanent residence under regulation 15 and produces on arrival—
 - (i) a valid passport; and
 - (ii) a valid EEA family permit, residence card, derivative residence card or permanent residence card.

(3) An immigration officer must not place a stamp in the passport of a person admitted to the United Kingdom under this regulation who is not an EEA national if the person produces a residence card, a derivative residence card, a permanent residence card or a qualifying EEA State residence card.

(4) Before an immigration officer refuses admission to the United Kingdom to a person under this regulation because the person does not produce on arrival a document mentioned in paragraph (1) or (2), the immigration officer must provide every reasonable opportunity for the document to be obtained by, or brought to, the person or allow the person to prove by other means that the person is—

- (a) an EEA national;
 - (b) a family member of an EEA national with a right to accompany that EEA national or join that EEA national in the United Kingdom;
 - (c) a person who meets the criteria in paragraph (5); or
 - (d) a family member who has retained the right of residence or a person with a right of permanent residence under regulation 15.
- (5) The criteria in this paragraph are that a person (“P”)—
- (a) previously resided in the United Kingdom under regulation 16(3) and would be entitled to reside in the United Kingdom under that regulation were P in the country;

- (b) is accompanying an EEA national to, or joining an EEA national in, the United Kingdom and P would be entitled to reside in the United Kingdom under regulation 16(2) were P and the EEA national both in the United Kingdom;
 - (c) is accompanying a person (“the relevant person”) to, or joining the relevant person in, the United Kingdom and—
 - (i) the relevant person is residing, or has resided, in the United Kingdom under regulation 16(3); and
 - (ii) P would be entitled to reside in the United Kingdom under regulation 16(4) were P and the relevant person both in the United Kingdom;
 - (d) is accompanying a person who meets the criteria in sub-paragraph (b) or (c) (“the relevant person”) to the United Kingdom and—
 - (i) P and the relevant person are both—
 - (aa) seeking admission to the United Kingdom in reliance on this paragraph for the first time; or
 - (bb) returning to the United Kingdom having previously resided there pursuant to the same provisions of regulation 16 in reliance on which they now base their claim to admission; and
 - (ii) P would be entitled to reside in the United Kingdom under regulation 16(6) were P and the relevant person there; or
 - (e) is accompanying a British citizen to, or joining a British citizen in, the United Kingdom and P would be entitled to reside in the United Kingdom under regulation 16(5) were P and the British citizen both in the United Kingdom.
- (6) Paragraph (7) applies where—
- (a) a person (“P”) seeks admission to the United Kingdom in reliance on paragraph (5)(b), (c) or (e); and
 - (b) if P were in the United Kingdom, P would have a derived right to reside under regulation 16(8)(b)(ii).
- (7) Where this paragraph applies a person (“P”) must only be regarded as meeting the criteria in paragraph (5)(b), (c) or (e) where P—
- (a) is accompanying the person with whom P would on admission to the United Kingdom jointly share care responsibility for the purpose of regulation 16(8)(b)(ii); or
 - (b) has previously resided in the United Kingdom pursuant to regulation 16(2), (4) or (5) as a joint primary carer and seeks admission to the United Kingdom in order to reside there again on the same basis.
- (8) But this regulation is subject to regulations 23(1), (2), (3) and (4) and 31.

Issue of EEA family permit

12.—(1) An entry clearance officer must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and—

- (a) the EEA national—
 - (i) is residing in the United Kingdom in accordance with these Regulations; or
 - (ii) will be travelling to the United Kingdom within six months of the date of the application and will be an EEA national residing in the United Kingdom in accordance with these Regulations on arrival in the United Kingdom; and

- (b) the family member will be accompanying the EEA national to the United Kingdom or joining the EEA national there.
- (2) An entry clearance officer must issue an EEA family permit to a person who applies and provides evidence demonstrating that, at the time at which the person first intends to use the EEA family permit, the person—
 - (a) would be entitled to be admitted to the United Kingdom because that person would meet the criteria in regulation 11(5); and
 - (b) will (save in the case of a person who would be entitled to be admitted to the United Kingdom because that person would meet the criteria for admission in regulation 11(5)(a)) be accompanying to, or joining in, the United Kingdom any person from whom the right to be admitted to the United Kingdom under the criteria in regulation 11(5) is derived.
- (3) An entry clearance officer must issue an EEA family permit to—
 - (a) a family member who has retained the right of residence; or
 - (b) a person who is not an EEA national but who has acquired the right of permanent residence under regulation 15.
- (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
 - (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
 - (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
 - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.
- (5) Where an entry clearance officer receives an application under paragraph (4) an extensive examination of the personal circumstances of the applicant must be undertaken by the Secretary of State and if the application is refused, the entry clearance officer must give reasons justifying the refusal unless this is contrary to the interests of national security.
- (6) An EEA family permit issued under this regulation must be issued free of charge and as soon as possible.
- (7) But an EEA family permit must not be issued under this regulation if the applicant or the EEA national concerned is not entitled to be admitted to the United Kingdom as a result of regulation 23(1), (2) or (3) or falls to be excluded in accordance with regulation 23(5).
- (8) An EEA family permit must not be issued under this regulation to a person (“A”) who is the spouse, civil partner or durable partner of a person (“B”) where a spouse, civil partner or durable partner of A or B holds a valid EEA family permit.

Initial right of residence

- 13.**—(1) An EEA national is entitled to reside in the United Kingdom for a period not exceeding three months beginning on the date of admission to the United Kingdom provided the EEA national holds a valid national identity card or passport issued by an EEA State.
- (2) A person who is not an EEA national but is a family member who has retained the right of residence or the family member of an EEA national residing in the United Kingdom under paragraph (1) is entitled to reside in the United Kingdom provided that person holds a valid passport.
 - (3) An EEA national or the family member of an EEA national who is an unreasonable burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation.

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside under this regulation where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b) (decision to remove on grounds of public policy, public security or public health), 24(1) (refusal to issue residence documentation etc), 25(1) (cancellation of a right of residence), 26(3) (misuse of right to reside) or 31(1) (revocation of admission), unless that decision is set aside or otherwise no longer has effect.

Extended right of residence

14.—(1) A qualified person is entitled to reside in the United Kingdom for as long as that person remains a qualified person.

(2) A person (“P”) who is a family member of a qualified person residing in the United Kingdom under paragraph (1) or of an EEA national with a right of permanent residence under regulation 15 is entitled to remain in the United Kingdom for so long as P remains the family member of that person or EEA national.

(3) A family member who has retained the right of residence is entitled to reside in the United Kingdom for so long as that person remains a family member who has retained the right of residence.

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside in the United Kingdom under this regulation where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

Right of permanent residence

15.—(1) The following persons acquire the right to reside in the United Kingdom permanently—

- (a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;
- (b) a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;
- (c) a worker or self-employed person who has ceased activity;
- (d) the family member of a worker or self-employed person who has ceased activity, provided—
 - (i) the person was the family member of the worker or self-employed person at the point the worker or self-employed person ceased activity; and
 - (ii) at that point, the family member enjoyed a right to reside on the basis of being the family member of that worker or self-employed person;
- (e) a person who was the family member of a worker or self-employed person where—
 - (i) the worker or self-employed person has died;
 - (ii) the family member resided with the worker or self-employed person immediately before the death; and
 - (iii) the worker or self-employed person had resided continuously in the United Kingdom for at least two years immediately before dying or the death was the result of an accident at work or an occupational disease;
- (f) a person who—
 - (i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and
 - (ii) was, at the end of the period, a family member who has retained the right of residence.

(2) Residence in the United Kingdom as a result of a derivative right to reside does not constitute residence for the purpose of this regulation.

(3) The right of permanent residence under this regulation is lost through absence from the United Kingdom for a period exceeding two years.

(4) A person who satisfies the criteria in this regulation is not entitled to a right to permanent residence in the United Kingdom where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

Derivative right to reside

16.—(1) A person has a derivative right to reside during any period in which the person—

- (a) is not an exempt person; and
- (b) satisfies each of the criteria in one or more of paragraphs (2) to (6).

(2) The criteria in this paragraph are that—

- (a) the person is the primary carer of an EEA national; and
- (b) the EEA national—
 - (i) is under the age of 18;
 - (ii) resides in the United Kingdom as a self-sufficient person; and
 - (iii) would be unable to remain in the United Kingdom if the person left the United Kingdom for an indefinite period.

(3) The criteria in this paragraph are that—

- (a) any of the person's parents ("PP") is an EEA national who resides or has resided in the United Kingdom;
- (b) both the person and PP reside or have resided in the United Kingdom at the same time, and during such a period of residence, PP has been a worker in the United Kingdom; and
- (c) the person is in education in the United Kingdom.

(4) The criteria in this paragraph are that—

- (a) the person is the primary carer of a person satisfying the criteria in paragraph (3) ("PPP"); and
- (b) PPP would be unable to continue to be educated in the United Kingdom if the person left the United Kingdom for an indefinite period.

(5) The criteria in this paragraph are that—

- (a) the person is the primary carer of a British citizen ("BC");
- (b) BC is residing in the United Kingdom; and
- (c) BC would be unable to reside in the United Kingdom or in another EEA State if the person left the United Kingdom for an indefinite period.

(6) The criteria in this paragraph are that—

- (a) the person is under the age of 18;
- (b) the person does not have leave to enter, or remain in, the United Kingdom under the 1971 Act;
- (c) the person's primary carer is entitled to a derivative right to reside in the United Kingdom under paragraph (2), (4) or (5); and

- (d) the primary carer would be prevented from residing in the United Kingdom if the person left the United Kingdom for an indefinite period.
- (7) In this regulation—
- (a) “education” excludes nursery education but does not exclude education received before the compulsory school age where that education is equivalent to the education received at or after the compulsory school age;
- (b) “worker” does not include a jobseeker or a person treated as a worker under regulation 6(2);
- (c) an “exempt person” is a person—
- (i) who has a right to reside under another provision of these Regulations;
 - (ii) who has the right of abode under section 2 of the 1971 Act⁽¹⁾;
 - (iii) to whom section 8 of the 1971 Act⁽²⁾, or an order made under subsection (2) of that section⁽³⁾, applies; or
 - (iv) who has indefinite leave to enter or remain in the United Kingdom.
- (8) A person is the “primary carer” of another person (“AP”) if—
- (a) the person is a direct relative or a legal guardian of AP; and
 - (b) either—
 - (i) the person has primary responsibility for AP’s care; or
 - (ii) shares equally the responsibility for AP’s care with one other person who is not an exempt person.
- (9) In paragraph (2)(b)(iii), (4)(b) or (5)(c), if the role of primary carer is shared with another person in accordance with paragraph (8)(b)(ii), the words “the person” are to be read as “both primary carers”.
- (10) Paragraph (9) does not apply if the person with whom care responsibility is shared acquired a derivative right to reside in the United Kingdom as a result of this regulation prior to the other person’s assumption of equal care responsibility.
- (11) A person is not be regarded as having responsibility for another person’s care for the purpose of paragraph (8) on the sole basis of a financial contribution towards that person’s care.
- (12) A person does not have a derivative right to reside where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

(1) Section 2 was amended by the British Nationality Act 1981, section 39(2), and the Immigration Act 1988, section 3(3).

(2) Section 8 was amended by the British Nationality Act 1981, section 39(4) and Schedule 4, paragraphs 2 and 5, the Immigration Act 1988, section 4, the 1999 Act, section 6, the Statute Law (Repeals) Act 1995 (c. 44), Schedule 1, Part II and the Immigration Act 2016 (c. 19), section 76(1).

(3) S.I. 1972/1613 was made under section 8(2) of the 1971 Act and has been amended by S.I. 1972/1613, 1975/617, 1977/693, 1982/1649, 1985/1809, 1997/1402, 2207, 2004/3171 and 2015/1866.