

2002 No. 1241

IMMIGRATION

**The Immigration (Swiss Free Movement of Persons)
(No. 3) Regulations 2002**

<i>Made</i> - - - - -	<i>1st May 2002</i>
<i>Laid</i> - - - - -	<i>9th May 2002</i>
<i>Coming into force</i> - -	<i>1st June 2002</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to rights of entry into, and residence in, the United Kingdom(b), in exercise of the powers conferred on him by that section, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Immigration (Swiss Free Movement of Persons) (No. 3) Regulations 2002 and shall come into force on 1st June 2002.

(2) The “2000 Regulations” means the Immigration (European Economic Area) Regulations 2000(c).

Application of 2000 Regulations to Swiss nationals, their family members and posted workers

2.—(1) The 2000 Regulations shall apply in relation to a Swiss national, and to any person related to that national, as if the Swiss national were an EEA national and Switzerland an EEA state.

(2) The 2000 Regulations shall also apply to a posted worker.

(3) In the application of the 2000 Regulations to a Swiss national or to any person related to a Swiss national or to a posted worker those Regulations shall have effect subject to the modifications set out in the Schedule to these Regulations.

(4) In this regulation—

- (a) “EEA national” and “EEA state” have the same meaning as in regulation 2(1) of the 2000 Regulations;
- (b) “posted worker” has the same meaning as in regulation 3(1) of the 2000 Regulations, as modified by the Schedule to these Regulations;
- (c) a person is related to a Swiss national if that person—
 - (i) is a family member of that Swiss national (as determined in accordance with regulation 6 of the 2000 Regulations); or

(a) 1972 c. 68.

(b) S.I. 2000/1813.

(c) S.I. 2000/2326; amended by S.I. 2001/865.

- (ii) would satisfy any of the conditions in regulation 10(4) of the 2000 Regulations in relation to the Swiss national if the Swiss national were an EEA national.

Home Office
1st May 2002

Bob Ainsworth
Parliamentary Under-Secretary of State

MODIFICATION OF 2000 REGULATIONS IN THEIR APPLICATION TO
SWISS NATIONALS

1. In regulation 2(1),
 - (a) after the definition of “the 1999 Act” insert—

““control zone” and “supplementary control zone” have the same meaning as in the Channel Tunnel (International Arrangements) Order 1993(a)”;
 - (b) after the definition of “military service” insert—

““posted worker authorisation” means a document issued to a person, in accordance with regulation 13A, in connection with his admission to the United Kingdom;”;
 - (c) after the definition of “Regulation 1251/70” insert—

““required documents” means the documents referred to in regulation 12(3);”.
 2. In regulation 3 of the 2000 Regulations—
 - (a) after paragraph (1)(b) insert—

“(ba) “posted worker” means a person who is not an EEA national and—
 - (i) is the employee of a Swiss national or Swiss company that provides or seeks to provide services in the United Kingdom;
 - (ii) is posted to the United Kingdom for the purpose of providing those services on behalf of his employer; and
 - (iii) prior to the posting, is integrated into the regular labour market of an EEA State, and, for the purpose of this definition, “services” has the same meaning as in Article 50 of the EC Treaty, and “Swiss company” means a company that is formed in accordance with the law of Switzerland and has its registered office, central administration or principal place of business in Switzerland;”;
 - (b) delete paragraph (1)(f);
 - (c) for paragraph (2) substitute—

“(2) For the purposes of paragraph (1)(e)—
 - (a) resources are to be regarded as sufficient if they exceed the level in respect of which the recipient would qualify for social assistance;
 - (b) where the person concerned has been employed in the United Kingdom for less than one year, any unemployment benefit to which he is entitled by virtue of having paid national insurance contributions shall be treated as the resources of that person.”.
3. At the end of regulation 7 insert “and, in the case of a posted worker, a valid posted worker authorisation”.
4. At the end of regulation 9 insert “and posted workers”.
5. In regulation 10, delete paragraph (5).
6. In regulation 12, after paragraph (2) insert—

“(3) Subject to regulation 21(1) and (2A), a posted worker must be admitted to the United Kingdom if he produces, on arrival—
 - (a) a valid passport; and
 - (b) a valid posted worker authorisation.

(4) Any passport, identity card, family permit, residence document, posted worker authorisation or document proving family membership which is required to be produced under this regulation as a condition for admission to the United Kingdom may, for the same purpose, be required to be produced in a control zone or a supplementary control zone.”.
7. After regulation 13 insert—

“13A Issue of posted worker authorisation

(1) A person may apply to an entry clearance officer for a posted worker authorisation authorising him to enter and reside in the United Kingdom in a calendar year if—
 - (a) he is to be posted to the United Kingdom by his employer during that calendar year;
 - (b) he will be a posted worker on arrival in the United Kingdom; and

(a) S.I. 1993/1813; amendments relevant to these Regulations are made by S.I. 2001/1544 and 2001/3707.

(c) he has not already been authorised to enter and reside in the United Kingdom under this regulation for 90 days or more in that calendar year.

(2) A posted worker authorisation issued under paragraph (1) shall specify the period during which the posted worker is authorised to enter and reside in the United Kingdom.

(3) A person who applies under paragraph (1) shall be entitled to be issued in relation to any calendar year with a single posted worker authorisation which individually, or with a number of authorisations which collectively, authorise him to enter and reside in the United Kingdom for at least 90 days in that calendar year.

(4) Paragraph (3) shall not apply if the applicant falls to be excluded from the United Kingdom on grounds of public policy, public security or public health.”.

8. In regulation 14, after paragraph (3) insert—

“(4) A posted worker is entitled to reside in the United Kingdom without the requirement for leave to remain under the 1971 Act for as long as he has a valid posted worker authorisation and the period of authorised entry and residence specified in that authorisation has not expired.”.

9. In regulation 15, after paragraph (2) insert—

“(2A) Subject to regulation 16A and 22 (1), the Secretary of State must issue a residence document to a posted worker on application and production of—

- (a) a valid passport; and
- (b) a valid posted worker authorisation”.

10. In regulation 16—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (b), after “worker who is employed” insert “, or self-employed person who is established,”;
 - (ii) delete sub-paragraph (c);
- (b) delete paragraph (2).

11. After regulation 16 insert—

“16A. Where no requirement to issue residence document

The Secretary of State is not required to issue a residence document to a posted worker if the period of authorised entry and residence specified in his posted worker authorisation is 90 days or less.”.

12. Delete regulation 17.

13. In regulation 18—

- (a) delete paragraph (3);
- (b) in paragraph (6) delete “a retired person or”.

14. After regulation 20 insert—

“20A. Duration of residence document granted to a posted worker

In the case of a posted worker the validity of the resident document may be limited to the period of authorised entry and residence specified in his posted worker authorisation.”.

15. In regulation 21—

- (a) in paragraph (2), after “arrival” insert “or the time of his production of the required documents in a control zone or supplementary control zone”;
- (b) after paragraph (2) insert—

“(2A) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 12(3) if, at the time of his arrival, he is not a posted worker.”;

 - (c) in paragraph (3)(b), after “such a person” insert “or a posted worker”;
 - (d) after paragraph (3) insert—

“(4) A person who was admitted to the United Kingdom as a posted worker may be removed from the United Kingdom if—

- (a) he ceases to be a posted worker or the period of authorised entry and residence specified in his posted worker authorisation has expired; and
- (b) he is not a qualified person or the family member of a qualified person.”.

16. In regulation 22—

- (a) in paragraph (2), after paragraph (b) insert—

“or

- (c) the person to whom the residence document was issued was admitted to the United Kingdom as a posted worker and—
 - (i) he has ceased to be a posted worker; and
 - (ii) he is not a qualified person or the family member of a qualified person.”;
- (b) in paragraph (3), after “EEA national” insert “, or the time of his production of the required documents in a control zone or supplementary control zone,” and at the end of that paragraph insert “or a posted worker”;
- (c) in paragraph (4), after “United Kingdom” insert “, or the time of his production of the required documents in a control zone or supplementary control zone,”;
- (d) after paragraph (4) insert—

“(5) An immigration officer may, at the time of a person’s arrival in the United Kingdom, or the time of his production of the required documents in a control zone or supplementary control zone, revoke that person’s posted worker authorisation if—

 - (a) the revocation is justified on the grounds of public policy, public security or public health; or
 - (b) the person is not at that time a posted worker.”.

17. In regulation 24(1), after paragraph (a) insert—

“(aa) a posted worker; or”.

18. In regulation 25—

(a) in paragraph (1)—

- (i) in sub-paragraph (a), after “EEA family permit” insert “or posted worker authorisation”;
- (ii) in sub-paragraph (b), for “or (2)” insert “, (2) or (2A)”;

(b) in paragraph (3)—

- (i) in sub-paragraph (b), after “EEA family permit” insert “, posted worker authorisation”;
- (ii) in sub-paragraph (c), after “EEA family permit” insert “, posted worker authorisation”.

19. In regulation 26—

(a) in paragraph (1), at the end insert “or (4)”;

(b) in paragraph (2), after “regulation 21(3)” insert “or regulation 21(4)”.

20. In regulation 30(3)(c), after “EEA family permit” insert “or posted worker authorisation”.

21. For regulation 35 and 36 substitute—

“35. Transitional provisions

(1) Where before 1st June 2002 a qualified person or the family member of a qualified person has been given limited leave to enter or remain in the United Kingdom under section 3 of the 1971 Act^(a) subject to conditions, those conditions shall cease to have effect on and after that date.

(2) Where before 1st June 2002 directions have been given for the removal of a qualified person or the family member of a qualified person under paragraphs 8 to 10 of Schedule 2 to the 1971 Act^(b) or section 10 of the 1999 Act, those directions shall cease to have effect on and after that date.

(3) Where before 1st June 2002 the Secretary of State has made a decision to make a deportation order against a qualified person or the family member of a qualified person under section 5(1) of the 1971 Act—

- (a) that decision shall, on and after 1st June 2002, be treated as if it were a decision under regulation 21(3)(b); and
- (b) any appeal against that decision, or against the refusal by the Secretary of State to revoke the deportation order, made under section 63 of the 1999 Act before 1st June 2002 shall, on and after that date, be treated as if it had been made under regulation 29.

(4) Any reference in this regulation to a qualified person or to the family member of a qualified person is a reference to a person who becomes a qualified person or the family member of a qualified person, as the case may be, on or after 1st June 2002 by virtue of these Regulations.”.

22. The modifications of the 2000 Regulations set out in paragraph 5 of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993(c) shall not apply.

(a) Section 3 had been amended by the British Nationality Act 1981 (c. 61), the Immigration Act 1998 (c. 14), the Asylum and Immigration Act 1996 (c. 49) and the 1999 Act.

(b) Paragraphs 8 to 10 have been amended by the Immigration Act 1988 (c. 14) and the Asylum and Immigration Act 1996 (c. 49).

(c) S.I. 1993/1813; paragraph 5 of Schedule 4 was inserted by S.I. 2001/3707.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on the Free Movement of Persons, signed at Brussels on 21st June 1999 (Cm 4904).

The Agreement confers on Swiss nationals and their family members broadly similar rights of entry into and residence in the United Kingdom as are enjoyed by non-United Kingdom nationals of European Economic Area States (“EEA nationals”). It also confers rights of entry and residence on employees of Swiss nationals or Swiss companies that provide or seek to provide services in the United Kingdom and send their employees to the United Kingdom for that purpose.

The rights of entry and residence of EEA nationals are dealt with in the Immigration (European Economic Area) Regulations 2000. To give effect to the Agreement the 2000 Regulations are applied to those who have rights under the Agreement (regulation 2 of these Regulations), but subject to the modifications set out in the Schedule to these Regulations. The modifications are required to take account of the difference between the situation of EEA nationals and those covered by the Agreement.

The Regulations come into force on 1st June 2002, the date on which the Agreement comes into force.

(The Immigration (Swiss Free Movement of Persons) Regulations 2002 (S.I. 2002/1012) were first made to give effect to the Agreement. Those Regulations, however, contained the wrong commencement date. They were, therefore, revoked by the Immigration (Swiss Free Movement of Persons) (No. 2) Regulations 2002 (S.I. 2002/1013). This explains why the present Regulations are called the Immigration (Swiss Free Movement of Persons) (No. 3) Regulations 2002. The first two sets of Regulations have not been published.)

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