
STATUTORY INSTRUMENTS

2016 No. 1052

The Immigration (European Economic Area) Regulations 2016

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 ^{M1};

“the 1999 Act” means the Immigration and Asylum Act 1999 ^{M2};

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

“the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006 ^{M3};

“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;

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“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—

- (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, a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card (but does not include a decision that an application for the above documentation is 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 a decision to refuse to issue a document under regulation 12(4) (issue of an EEA family permit to an extended family member), 17(5) (issue of a registration certificate to an extended family member) or 18(4) (issue of a residence card to an extended family member), a decision to reject 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;

“EEA national” means a national of an EEA State who is not also a British citizen;

“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 ^{M4};

“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—

- (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^{M5} (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)^{M6} 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.

Marginal Citations

- M1** 1971 c. 77.
- M2** 1999 c. 33.
- M3** 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.
- M4** 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.
- M5** OJ No L 158, 30.4.04, p98.
- M6** Section 11 was amended by the 2002 Act, section 62(8), and S.I 1993/1813 and 2003/1016.

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;

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- (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.

“Worker”, “self-employed person”, “self-sufficient person” and “student”

4.—(1) In these Regulations—

- (a) “worker” means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union ^{M7};
 - (b) “self-employed person” means a person who is established in the United Kingdom in order to pursue activity as a self-employed person in accordance with Article 49 of the Treaty on the Functioning of the European Union ^{M8};
 - (c) “self-sufficient person” means a person who has—
 - (i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's period of residence; and
 - (ii) comprehensive sickness insurance cover in the United Kingdom;
 - (d) “student” means a person who—
 - (i) is enrolled, for the principal purpose of following a course of study (including vocational training), at a public or private establishment which is—
 - (aa) financed from public funds; or
 - (bb) otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or training within the law or administrative practice of the part of the United Kingdom in which the establishment is located;
 - (ii) has comprehensive sickness insurance cover in the United Kingdom; and
 - (iii) has assured the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that the person has sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's intended period of residence.
- (2) For the purposes of paragraphs (3) and (4) below, “relevant family member” means a family member of a self-sufficient person or student who is residing in the United Kingdom and whose right to reside is dependent upon being the family member of that student or self-sufficient person.
- (3) In sub-paragraphs (1)(c) and (d)—
- (a) the requirement for the self-sufficient person or student to have sufficient resources not to become a burden on the social assistance system of the United Kingdom during the intended period of residence is only satisfied if the resources available to the student or self-sufficient person and any of their relevant family members are sufficient to avoid the

self-sufficient person or student and all their relevant family members from becoming such a burden; and

- (b) the requirement for the student or self-sufficient person to have comprehensive sickness insurance cover in the United Kingdom is only satisfied if such cover extends to cover both the student or self-sufficient person and all their relevant family members.

(4) In paragraph (1)(c) and (d) and paragraph (3), the resources of the student or self-sufficient person and, where applicable, any of their relevant family members, are to be regarded as sufficient if—

- (a) they exceed the maximum level of resources which a British citizen (including the resources of the British citizen's family members) may possess if the British citizen is to become eligible for social assistance under the United Kingdom benefit system; or
- (b) paragraph (a) does not apply but, taking into account the personal circumstances of the person concerned and, where applicable, all their relevant family members, it appears to the decision maker that the resources of the person or persons concerned should be regarded as sufficient.

(5) For the purposes of regulation 16(2) (criteria for having a derivative right to reside), references in this regulation to “family members” includes a “primary carer” as defined in regulation 16(8).

Marginal Citations

M7 OJ No C326, 26.10.12, p65.

M8 OJ No C326, 26.10.12, p67.

“Worker or self-employed person who has ceased activity”

5.—(1) In these Regulations, “worker or self-employed person who has ceased activity” means an EEA national who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person—

- (a) terminates activity as a worker or self-employed person and—
 - (i) had reached the age of entitlement to a state pension on terminating that activity; or
 - (ii) in the case of a worker, ceases working to take early retirement;
- (b) pursued activity as a worker or self-employed person in the United Kingdom for at least 12 months prior to the termination; and
- (c) resided in the United Kingdom continuously for more than three years prior to the termination.

(3) The condition in this paragraph is that the person terminates activity in the United Kingdom as a worker or self-employed person as a result of permanent incapacity to work; and—

- (a) had resided in the United Kingdom continuously for more than two years prior to the termination; or
- (b) the incapacity is the result of an accident at work or an occupational disease that entitles the person to a pension payable in full or in part by an institution in the United Kingdom.

(4) The condition in this paragraph is that the person—

- (a) is active as a worker or self-employed person in an EEA State but retains a place of residence in the United Kingdom and returns, as a rule, to that place at least once a week; and

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(b) prior to becoming so active in the EEA State, had been continuously resident and continuously active as a worker or self-employed person in the United Kingdom for at least three years.

(5) A person who satisfied the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) must, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the United Kingdom during any period during which that person is working or self-employed in the EEA State.

(6) The conditions in paragraphs (2) and (3) as to length of residence and activity as a worker or self-employed person do not apply in relation to a person whose spouse or civil partner is a British citizen.

(7) Subject to regulation 6(2), periods of—

- (a) inactivity for reasons not of the person's own making;
- (b) inactivity due to illness or accident; and
- (c) in the case of a worker, involuntary unemployment duly recorded by the relevant employment office,

must be treated as periods of activity as a worker or self-employed person, as the case may be.

“Qualified person”

6.—(1) In these Regulations—

“jobseeker” means an EEA national who satisfies conditions A, B and, where relevant, C;

“qualified person” means a person who is an EEA national and in the United Kingdom as—

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student;

“relevant period” means—

- (a) in the case of a person retaining worker status under paragraph (2)(b), a continuous period of six months;
- (b) in the case of a jobseeker, 91 days, minus the cumulative total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.

(2) A person who is no longer working must continue to be treated as a worker provided that the person—

- (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—
 - (i) has registered as a jobseeker with the relevant employment office; and
 - (ii) satisfies conditions A and B;
- (c) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided the person—
 - (i) has registered as a jobseeker with the relevant employment office; and
 - (ii) satisfies conditions A and B;

- (d) is involuntarily unemployed and has embarked on vocational training; or
 - (e) has voluntarily ceased working and has embarked on vocational training that is related to the person's previous employment.
- (3) A person to whom paragraph (2)(c) applies may only retain worker status for a maximum of six months.
- (4) A person who is no longer in self-employment continues to be treated as a self-employed person if that person is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident.
- (5) Condition A is that the person—
- (a) entered the United Kingdom in order to seek employment; or
 - (b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside under sub-paragraphs (b) to (e) of the definition of qualified person in paragraph (1) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (c)).
- (6) Condition B is that the person provides evidence of seeking employment and having a genuine chance of being engaged.
- (7) A person may not retain the status of—
- (a) a worker under paragraph (2)(b); or
 - (b) a jobseeker;
- for longer than the relevant period without providing compelling evidence of continuing to seek employment and having a genuine chance of being engaged.
- (8) Condition C applies where the person concerned has, previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B—
- (a) in the case of a person to whom paragraph (2)(b) or (c) applied, for at least six months; or
 - (b) in the case of a jobseeker, for at least 91 days in total,
- unless the person concerned has, since enjoying the above right to reside, been continuously absent from the United Kingdom for at least 12 months.
- (9) Condition C is that the person has had a period of absence from the United Kingdom.
- (10) Where condition C applies—
- (a) paragraph (7) does not apply; and
 - (b) condition B has effect as if “compelling” were inserted before “evidence”.

“Family member”

- 7.—(1) In these Regulations, “family member” means, in relation to a person (“A”)—
- (a) A's spouse or civil partner;
 - (b) A's direct descendants, or the direct descendants of A's spouse or civil partner who are either—
 - (i) aged under 21; or
 - (ii) dependants of A, or of A's spouse or civil partner;
 - (c) dependent direct relatives in A's ascending line, or in that of A's spouse or civil partner.
- (2) Where A is a student residing in the United Kingdom otherwise than under regulation 13 (initial right of residence), a person is not a family member of A under paragraph (1)(b) or (c) unless—

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- (a) in the case of paragraph (1)(b), the person is the dependent child of A or of A's spouse or civil partner; or
 - (b) A also falls within one of the other categories of qualified person mentioned in regulation 6(1).
- (3) A person (“B”) who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card must be treated as a family member of A, provided—
- (a) B continues to satisfy the conditions in regulation 8(2), (3), (4) or (5); and
 - (b) the EEA family permit, registration certificate or residence card remains in force.
- (4) A must be an EEA national unless regulation 9 applies (family members of British citizens).

“Extended family member”

8.—(1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

- (2) The condition in this paragraph is that the person is—
- (a) a relative of an EEA national; and
 - (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either—
 - (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
 - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.
- (3) The condition in this paragraph is that the person is a relative of an EEA national and on serious health grounds, strictly requires the personal care of the EEA national.
- (4) The condition in this paragraph is that the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national.
- (5) The condition in this paragraph is that the person is the partner (other than a civil partner) of, and in a durable relationship with, an EEA national, and is able to prove this to the decision maker.
- (6) In these Regulations, “relevant EEA national” means, in relation to an extended family member—
- (a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related;
 - (b) referred to in paragraph (5), the EEA national who is the durable partner of the extended family member.
- (7) In paragraphs (2) and (3), “relative of an EEA national” includes a relative of the spouse or civil partner of an EEA national where on the basis of being an extended family member a person—
- (a) has prior to the 1st February 2017 been issued with—
 - (i) an EEA family permit;
 - (ii) a registration certificate; or
 - (iii) a residence card; and
 - (b) has since the most recent issue of a document satisfying sub-paragraph (a) been continuously resident in the United Kingdom.

Family members of British citizens

9.—(1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member (“F”) of a British citizen (“BC”) as though the BC were an EEA national.

(2) The conditions are that—

(a) BC—

(i) is residing in an EEA State as a worker, self-employed person, self-sufficient person or a student, or so resided immediately before returning to the United Kingdom; or

(ii) has acquired the right of permanent residence in an EEA State;

(b) F and BC resided together in the EEA State; and

(c) F and BC's residence in the EEA State was genuine.

(3) Factors relevant to whether residence in the EEA State is or was genuine include—

(a) whether the centre of BC's life transferred to the EEA State;

(b) the length of F and BC's joint residence in the EEA State;

(c) the nature and quality of the F and BC's accommodation in the EEA State, and whether it is or was BC's principal residence;

(d) the degree of F and BC's integration in the EEA State;

(e) whether F's first lawful residence in the EU with BC was in the EEA State.

(4) This regulation does not apply—

(a) where the purpose of the residence in the EEA State was as a means for circumventing any immigration laws applying to non-EEA nationals to which F would otherwise be subject (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or

(b) to a person who is only eligible to be treated as a family member as a result of regulation 7(3) (extended family members treated as family members).

(5) Where these Regulations apply to F, BC is to be treated as holding a valid passport issued by an EEA State for the purposes of the application of these Regulations to F.

(6) In paragraph (2)(a)(ii), BC is only to be treated as having acquired the right of permanent residence in the EEA State if such residence would have led to the acquisition of that right under regulation 15, had it taken place in the United Kingdom.

(7) For the purposes of determining whether, when treating the BC as an EEA national under these Regulations in accordance with paragraph (1), BC would be a qualified person—

(a) any requirement to have comprehensive sickness insurance cover in the United Kingdom still applies, save that it does not require the cover to extend to BC;

(b) in assessing whether BC can continue to be treated as a worker under regulation 6(2)(b) or (c), BC is not required to satisfy condition A;

(c) in assessing whether BC can be treated as a jobseeker as defined in regulation 6(1), BC is not required to satisfy conditions A and, where it would otherwise be relevant, condition C.

“Family member who has retained the right of residence”

10.—(1) In these Regulations, “family member who has retained the right of residence” means, subject to paragraphs (8) and (9), a person who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person—

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- (a) was a family member of a qualified person or of an EEA national with a right of permanent residence when the qualified person or the EEA national with the right of permanent residence died;
 - (b) resided in the United Kingdom in accordance with these Regulations for at least the year immediately before the death of the qualified person or the EEA national with a right of permanent residence; and
 - (c) satisfies the condition in paragraph (6).
- (3) The condition in this paragraph is that the person—
- (a) is the direct descendant of—
 - (i) a qualified person or an EEA national with a right of permanent residence who has died;
 - (ii) a person who ceased to be a qualified person on ceasing to reside in the United Kingdom;
 - (iii) the spouse or civil partner of the qualified person or EEA national described in sub-paragraph (i) immediately preceding that qualified person or EEA national's death; or
 - (iv) the spouse or civil partner of the person described in sub-paragraph (ii); and
 - (b) was attending an educational course in the United Kingdom immediately before the qualified person or the EEA national with a right of permanent residence died, or ceased to be a qualified person, and continues to attend such a course.
- (4) The condition in this paragraph is that the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).
- (5) The condition in this paragraph is that the person (“A”)—
- (a) ceased to be a family member of a qualified person or an EEA national with a right of permanent residence on the termination of the marriage or civil partnership of A;
 - (b) was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
 - (c) satisfies the condition in paragraph (6); and
 - (d) either—
 - (i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership, the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;
 - (ii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has custody of a child of that qualified person or EEA national;
 - (iii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has the right of access to a child of that qualified person or EEA national, where the child is under the age of 18 and where a court has ordered that such access must take place in the United Kingdom; or
 - (iv) the continued right of residence in the United Kingdom of A is warranted by particularly difficult circumstances, such as where A or another family member has been a victim of domestic violence whilst the marriage or civil partnership was subsisting.
- (6) The condition in this paragraph is that the person—

- (a) is not an EEA national but would, if the person were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or
- (b) is the family member of a person who falls within paragraph (a).

(7) In this regulation, “educational course” means a course within the scope of Article 10 of Council Regulation (EU) No. 492/2011 ^{M9}.

(8) A person (“P”) does not satisfy a condition in paragraph (2), (3), (4) or (5) if, at the first time P would otherwise have satisfied the relevant condition, P had a right of permanent residence under regulation 15.

(9) A family member who has retained the right of residence ceases to enjoy that status on acquiring a right of permanent residence under regulation 15.

Marginal Citations

M9 OJ No L 141, 27.5.2011, p3.

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