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STATUTORY INSTRUMENTS

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**2020 No. 1213**

**The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020**

**PART 4**

**Refusal of admission and removal**

**Refusal of admission**

**12.**—(1) An immigration officer must refuse a person's admission to the United Kingdom by virtue of regulation 6 where—

- (a) the refusal to admit that person is justified on grounds of public policy, public security or public health in accordance with regulation 18, on conducive grounds in accordance with regulation 19, or on grounds of misuse of rights in accordance with regulation 20;
- (b) that person is subject to a relevant restriction decision; or
- (c) that person is not required to produce a frontier worker permit under regulation 6(1)(b) but the immigration officer is not satisfied that they are a frontier worker.

(2) When refusing admission under paragraph (1) an immigration officer must revoke that person's frontier worker permit.

**Person refused admission**

**13.**—(1) This regulation applies to a person who is in the United Kingdom and has been refused admission to the United Kingdom—

- (a) because they are not a frontier worker;
- (b) because they do not produce a valid identity document or valid frontier worker permit; or
- (c) in accordance with regulation 12.

(2) A person to whom this regulation applies is to be treated as if the person were a person refused leave to enter under the 1971 Act for the purpose of paragraphs 8, 10, 10A, 11 and 16 to 19 of Schedule 2 to the 1971 Act<sup>(1)</sup> (and the provisions of Part 1 of Schedule 10 to the Immigration Act 2016 (immigration bail)<sup>(2)</sup> apply accordingly), except that in paragraph 19 of Schedule 2 to the 1971 Act—

- (a) sub-paragraph (1) is to be read as if after the words “to enter the United Kingdom” there were inserted “under the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020”;

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(1) The relevant parts of Schedule 2 were amended by: section 39 of, and paragraph 3 of Schedule 4 to, the British Nationality Act 1981 (c. 61), section 10 of, and paragraph 9 of the Schedule to, the Immigration Act 1988 (c. 14), section 12 of, and paragraphs 6 to 8 of Schedule 2 and Schedule 4 to, the Asylum and Immigration Act 1996 (c. 49), sections 140 and 169 of, and paragraphs 43, 60 and 61 of Schedule 14 to, the Immigration and Asylum Act 1999, sections 63, 64, 73 and 114 of and paragraph 4 of Schedule 7 to the Nationality Immigration and Asylum Act 2002, section 42 of the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 4, 5, 9, 12 and 13 of, and paragraphs 1 and 2 of Schedule 1 and paragraph 1 of Schedule 2 to, the Immigration Act 2014 (c. 22), section 60 of the Immigration Act 2016.

(2) 2016 c. 19.

- (b) in sub-paragraph (2), the references to a certificate of entitlement, entry clearance or work permit (in each place they occur) are to be read collectively as a reference to a frontier worker permit; and
- (c) sub-paragraph (3) is to be read as if after the words “to enter the United Kingdom” there were inserted “under the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020”.

### **Revocation of admission**

**14.**—(1) This regulation applies to a person admitted to the United Kingdom under regulation 6 in circumstances where, under regulation 12(1), that person was not entitled to be admitted.

(2) Paragraph 6(2) of Schedule 2 to the 1971 Act applies to a person to whom this regulation applies, as though the references to—

- (a) that person’s examination under paragraph 2 of Schedule 2 to the 1971 Act were to that paragraph as applied by regulation 7(2)(a) and (e);
- (b) notices of leave to enter the United Kingdom were to a decision to admit that person to the United Kingdom under these Regulations; and
- (c) the cancellation of such a notice and the refusal of leave to enter were to revocation of the decision to admit that person to the United Kingdom under this regulation.

(3) Where a person’s admission to the United Kingdom is revoked, that person is to be treated as a person to whom admission to the United Kingdom has been refused and regulation 13 applies accordingly.

### **Removal**

**15.**—(1) A frontier worker who has entered the United Kingdom may be removed if—

- (a) that person ceases to be a frontier worker;
- (b) the Secretary of State has decided that the person’s removal is justified on grounds of public policy, public security or public health in accordance with regulation 18; or
- (c) the Secretary of State has decided that the person’s removal is justified on grounds of misuse of rights under regulation 20.

(2) The notice of a decision under paragraph (1)(b) must state that upon execution of any deportation order arising from that decision, the person against whom the order was made is prohibited from entering the United Kingdom—

- (a) until the order is revoked; or
- (b) for the period specified in the order.

### **Person subject to removal**

**16.**—(1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the United Kingdom by virtue of regulation 15(1)(b) that person may be detained under the authority of the Secretary of State pending a decision whether or not to remove the person under that regulation, and paragraphs 17 to 18A of Schedule 2 to the 1971 Act apply in relation to the detention of such a person as those paragraphs apply in relation to a person who may be detained under paragraph 16 of that Schedule.

(2) Where a decision is taken to remove a person by virtue of regulation 15(1)(a) or (c) the person is to be treated as if the person were a person to whom section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom)(3) applies.

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(3) 1999 c. 23. Section 10 was amended by section 1 of the Immigration Act 2014.

(3) Where a decision is taken to remove a person by virtue of regulation 15(1)(b), the person is to be treated as if the person were a person to whom section 3(5)(a) of the 1971 Act(4) (liability to deportation) applies, and section 5 of that Act(5) (procedure for deportation) and Schedule 3 to that Act(6) (supplementary provision as to deportation) apply accordingly.

(4) A person who enters the United Kingdom in breach of a deportation order made by virtue of regulation 15(1)(b), or in circumstances where that person was not entitled to be admitted under regulation 12 is removable as an illegal entrant under Schedule 2 to the 1971 Act and the provisions of that Schedule apply accordingly.

(5) Where a deportation order has been made by virtue of regulation 15(1)(b) but the person is not removed under the order during the two year period beginning on the date on which the order is made, the Secretary of State may only take action to remove the person under the order at the end of that period if, having assessed whether there has been any material change in circumstances since the deportation order was made, the Secretary of State considers that the removal continues to be justified on the grounds of public policy, public security or public health in accordance with regulation 18.

### **Revocation of deportation orders**

17.—(1) A deportation order made by virtue of these Regulations remains in force—

- (a) until the order is revoked under this regulation; or
- (b) for the period specified in the order.

(2) A person who is subject to a deportation order made by virtue of these Regulations may only apply to the Secretary of State to have it revoked on the basis that there has been a material change in the circumstances that justified the making of the order.

(3) An application under paragraph (2) must set out the material change in circumstances relied upon by the applicant and may only be made whilst the applicant is outside the United Kingdom.

(4) On receipt of an application under paragraph (2) the Secretary of State must revoke the order if the Secretary of State considers that the criteria for making such an order are no longer satisfied.

(5) The Secretary of State must take a decision on an application under paragraph (2) no later than six months after the date on which the application is received.

### **Decisions taken on grounds of public policy, public security and public health**

18.—(1) In this regulation, a “relevant decision” means a decision taken under these Regulations on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken except on imperative grounds of public security in respect of a frontier worker who is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989(7).

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(4) Section 3(5)(a) was amended by paragraphs 43 and 44 of Schedule 14 to the Immigration and Asylum Act 1999.

(5) Section 5 was amended by paragraph 2 of Schedule 4 to the British Nationality Act 1981, paragraph 2 of the Schedule to the Immigration Act 1988, paragraph 2 of Schedule 2 to the Asylum and Immigration Act 1996 and paragraph 37 of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

(6) Schedule 3 was amended by the Criminal Justice Act 1982 (c. 48), paragraphs 1 and 2 of Schedule 10 to the Immigration Act 1988, paragraph 10 of Schedule 10 to the Asylum and Immigration Act 1996, paragraph 13 of Schedule 2 to the Immigration and Asylum Act 1999, section 54 of, and paragraphs 43 and 68 of Schedule 14 to, the Nationality Asylum and Immigration Act 2002, paragraphs 7 and 8 of Schedule 7 to the Courts Act 2003, paragraph 150 of Schedule 8 and Schedule 10 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, section 34 of the Immigration, Asylum and Nationality Act 2006, section 53 of the Immigration Act 2014, section 60 of, paragraph 2(2) of Schedule 1 and paragraphs 9, 20 and 24 of Schedule 9 to, the Immigration Act 2016.

(7) Treaty Series No. 44 (1992) Cmd 1976 at <http://treaties.fco.gov.uk/docs/pdf/1992/TS0044.pdf>.

(4) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—

- (a) the decision must comply with the principle of proportionality;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person’s previous criminal convictions do not in themselves justify the decision; and
- (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(5) Before taking a relevant decision on the grounds of public policy or public security in relation to a frontier worker (“P”) the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P’s length of presence in the United Kingdom, P’s social and cultural integration into the United Kingdom and the extent of P’s links with P’s country of origin.

(6) In the case of a relevant decision taken on grounds of public health—

- (a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010<sup>(8)</sup>; or
- (b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom,

does not constitute grounds for the decision.

(7) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in the Schedule (considerations of public policy, public security and the fundamental interests of society etc).

### **Decisions taken on conducive grounds**

19.—(1) This regulation applies to conduct taking place after IP completion day.

(2) A decision under this regulation may be taken on the ground that the decision is conducive to the public good.

### **Misuse of frontier workers’ rights**

20.—(1) The misuse of frontier workers’ rights occurs where a person—

- (a) observes the requirements of these Regulations in circumstances which do not achieve the purpose of the withdrawal agreement, the EEA EFTA separation agreement or the Swiss citizens’ rights agreement as they relate to frontier workers’ rights; and
- (b) intends to obtain an advantage from these Regulations by engaging in conduct which artificially creates the conditions required to satisfy the criteria set out in these Regulations.

(2) Such misuse includes attempting to remain in the United Kingdom as a frontier worker for purposes other than exercising frontier workers’ rights.

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<sup>(8)</sup> S.I. 2010/659.

(3) The Secretary of State may take a decision on the grounds of misuse of rights where there are reasonable grounds to suspect the misuse of frontier workers' rights and it is proportionate to do so.

(4) This regulation may not be exercised systematically.