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STATUTORY INSTRUMENTS

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**2020 No. 1372**

**The Immigration (Citizens' Rights  
etc.) (EU Exit) Regulations 2020**

**PART 2**

**IMMIGRATION**

**Amendment of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020**

**2.—**(1) The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020<sup>(1)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the 2002 Act”, insert—

““the 1972 Order” means the Immigration (Control of Entry through Republic of Ireland) Order 1972;”;

(b) after the definition of “appellant”, insert—

““Appendix S2” means Appendix S2 Healthcare Visitor to the immigration rules<sup>(2)</sup>;”;

(c) after the definition of “frontier worker permit”, insert—

““healthcare entry clearance” means entry clearance granted by virtue of Appendix S2 for the purpose of acquiring leave to enter or remain in the United Kingdom by virtue of that Appendix<sup>(3)</sup>;

“healthcare leave”, in relation to a person (“P”), means leave to enter or remain in the United Kingdom granted to P by virtue of Appendix S2<sup>(4)</sup>;

“person with a healthcare right of entry” means a person who has the right to enter the United Kingdom by virtue of—

(a) Article 32(1)(b) of the withdrawal agreement,

(b) Article 31(1)(b) of the EEA EFTA separation agreement, or

(c) Article 26a(1)(b) of the Swiss citizens' rights agreement<sup>(5)</sup>.”.

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(1) [S.I. 2020/61](#), amended by [S.I. 2020/1213](#).

(2) See section 17(5) of the European Union (Withdrawal Agreement) Act 2020 for the meaning of “immigration rules”. Appendix S2 Healthcare Visitor refers to “permission to stay” which is defined in paragraph 6 of the immigration rules as laid before Parliament on 22nd October 2020 (HC 813) to include leave to remain in the United Kingdom.

(3) See section 17(5) of the European Union (Withdrawal Agreement) Act 2020 for the meaning of “entry clearance”.

(4) Leave to enter by virtue of Appendix S2 includes leave to enter obtained by passing through an automated gate in accordance with Article 8B of the Immigration (Leave to Enter and Remain) Order 2000 [S.I. 2000/1161](#) as a person seeking to enter the United Kingdom as an S2 Healthcare Visitor under Appendix S2 and leave to enter as an Appendix S2 visitor granted orally in accordance with article 8 of [S.I. 2000/1161](#) as prospectively amended by [S.I. 2020/1353](#).

(5) See section 39(1) of the European Union (Withdrawal Agreement) Act 2020 for the meaning of “withdrawal agreement”, “EEA EFTA separation agreement” and “Swiss citizens' rights agreement”.

(3) In Part 2, in the heading after the heading to Chapter 1 of that Part after “frontier workers” insert “or persons with a healthcare right of entry”.

(4) In regulation 6 (right of appeal against decisions to make a deportation order in respect of a person other than a person claiming to be a frontier worker)—

- (a) in the heading, after “worker” insert “or a person with a healthcare right of entry”;
- (b) for paragraph (3) substitute—

“(3) But paragraph (2) does not apply to a person if the decision to remove that person was taken—

- (a) under regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016<sup>(6)</sup> (“the 2016 Regulations”), where the decision to remove was taken before the revocation of the 2016 Regulations, or
- (b) otherwise, under regulation 23(6)(b) of the 2016 Regulations as it continues to have effect by virtue of the Citizens’ Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020<sup>(7)</sup> or the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020<sup>(8)</sup>.”.

(5) After regulation 6F (alternative evidence of identity and nationality)<sup>(9)</sup> insert—

*“Decisions relating to persons with a healthcare right of entry*

**Right of appeal against decisions relating to leave to enter or remain in the United Kingdom granted to or obtained by a person with a healthcare right of entry**

**6G.**—(1) A person (“P”) may appeal against a decision made on or after IP completion day—

- (a) to vary P’s healthcare leave, so that P does not have leave to enter or remain in the United Kingdom,
- (b) to cancel P’s healthcare leave,
- (c) where P applies on or after IP completion day for leave to enter or remain in the United Kingdom under Appendix S2, not to grant such leave to P, or
- (d) not to vary P’s leave to enter or remain in the United Kingdom granted by virtue of Appendix S2 in response to P’s relevant application.

(2) In this regulation, “relevant application” means an application for, or as the case may be, to vary, leave to enter or remain in the United Kingdom made under Appendix S2 on or after IP completion day.

**Right of appeal against decisions made in connection with healthcare entry clearance**

**6H.** A person may appeal against a decision made on or after IP completion day

- (a) where the person applies for healthcare entry clearance on or after IP completion day, to refuse their application,
- (b) to cancel or revoke their healthcare entry clearance,

<sup>(6)</sup> [SI 2016/1052](#), amended by [S.I 2017/1](#), [2017/1242](#), [2018/801](#), [2019/468](#), [2019/745](#) and [2019/1155](#). The amendments made by [S.I. 2019/745](#) are not yet in force and are revoked by regulation 48 of [S.I. 2020/1309](#) before they come into force. [S.I. 2016/1052](#) is revoked by section 1 of, and paragraph 2(2) of Schedule 1 to, the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.

<sup>(7)</sup> [S.I. 2020/1210](#).

<sup>(8)</sup> [S.I. 2020/1209](#).

<sup>(9)</sup> Regulation 6F was inserted by [S.I. 2020/2013](#).

- (c) where they have healthcare entry clearance, to refuse them leave to enter the United Kingdom under article 7(1) of the Immigration (Leave to Enter and Remain) Order 2000<sup>(10)</sup>, or
- (d) to cancel or vary the leave to enter the United Kingdom which they have by virtue of having arrived in the United Kingdom with healthcare entry clearance.

#### **Right of appeal against decision to vary leave under article 5 of the 1972 Order**

**6I.** A person (“P”) may appeal against a decision, made on or after IP completion day, to vary their leave to enter or remain in the United Kingdom if—

- (a) P is in the United Kingdom, and
- (b) Article 5 of the 1972 Order applied to P on their entry to the United Kingdom.

#### **Right of appeal against decisions to make a deportation order in respect of a person with a healthcare right of entry**

**6J.—(1)** A person to whom paragraph (2) applies may appeal against a decision, made on or after IP completion day, to make a deportation order under section 5(1) of the 1971 Act in respect of them.

(2) This paragraph applies to a person —

- (a) who has healthcare leave,
- (b) who is in the United Kingdom (whether or not the person has entered within the meaning of section 11(1) of the 1971 Act<sup>(11)</sup>) having arrived with healthcare entry clearance, or
- (c) to whom Article 5 of the 1972 Order applied on their entry to the United Kingdom.

(3) But paragraph (2) does not apply to a person if the decision to remove that person was taken—

- (a) under regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”), where the decision to remove is taken before the 2016 Regulations are revoked, or
- (b) otherwise, under regulation 23(6)(b) of the 2016 Regulations as it continues to have effect by virtue of the Citizens’ Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 or the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020.

(4) The reference in paragraph (2) to a person who has healthcare leave includes reference to a person who would have such leave but for the making of a deportation order under section 5(1) of the 1971 Act.”

(6) In regulation 8 (grounds of appeal)—

- (a) in paragraph (2)—
  - (i) in sub-paragraph (a), after “Title II” insert “, or Article 32(1)(b) of Title III,”;
  - (ii) in sub-paragraph (b), after “Title II” insert “, or Article 31(1)(b) of Title III,”;
  - (iii) in sub-paragraph (c), after “2” insert “, or Article 26a(1)(b),”;
- (b) in paragraph (3), after sub-paragraph (f) insert—

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<sup>(10)</sup> S.I. 2000/1161, amended by S.I. 2010/957, 2013/1749, 2015/434, 2016/1132, 2019/298 and prospectively amended by S.I. 2020/1353.

<sup>(11)</sup> Section 11(1) was amended by paragraph 48 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), section 62(8) of the Nationality, Immigration and Asylum Act 2002 (c. 14), and paragraph 15 of Schedule 10 to the Immigration Act 2016 (c. 19).

- “(g) where the decision is mentioned in regulation 6G(1)(a) or (1)(b) or 6H, it is not in accordance with the provision of the immigration rules by virtue of which it was made;
  - (h) where the decision is mentioned in regulation 6G(1)(c) or (1)(d), it is not made in accordance with Appendix S2;
  - (i) where the decision is mentioned in regulation 6I, it is not made in accordance with the provision of, or made under, the 1971 Act (including the immigration rules) by virtue of which it was made;
  - (j) where the decision is mentioned in regulation 6J, it is not in accordance with section 3(5) or (6) of the 1971 Act, or Appendix S2 (as the case may be).”.
- (7) In regulation 13 (pending appeal)—
- (a) in paragraph (3), for “these Regulations” substitute “regulations 3 to 6”;
  - (b) after paragraph (4B), insert—
    - “(4C) An appeal under regulations 6G to 6J is to be treated as abandoned if the appellant—
      - (a) is granted leave to enter or remain in the United Kingdom by virtue of Appendix S2, or
      - (b) obtains leave to enter the United Kingdom by passing through an automated gate in accordance with article 8B of the Immigration (Leave to Enter and Remain) Order 2000 as a person seeking to enter the United Kingdom as an S2 Healthcare Visitor under Appendix S2.
    - (4D) An appeal under regulation 6G(d) is also to be treated as abandoned if the appellant’s leave to enter or remain in the United Kingdom granted by virtue of Appendix S2 is varied, however that variation may have effect, so that the appellant has leave to enter or remain under Appendix S2.
    - (4E) An appeal under regulation 6I or 6J is also to be treated as abandoned if the Secretary of State agrees that Article 5 of the 1972 Order applies to the appellant.”.