

**2019 No. 468**

**EXITING THE EUROPEAN UNION**

**IMMIGRATION**

**The Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019**

*Made* - - - - *6th March 2019*

*Laid before Parliament* *7th March 2019*

*Coming into force in accordance with regulation 1*

The Secretary of State, being a Minister designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup>, in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred by that section and those conferred by section 9(2) and (6) of the Immigration Act 1971<sup>(c)</sup> and section 109 of the Nationality, Immigration and Asylum Act 2002<sup>(d)</sup>, makes the following Regulations.

**PART 1**

**Introductory**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019.

(2) This regulation, regulation 3 (amendment of the Immigration (European Economic Area) Regulations 2016) and regulation 4 (transitional provision) come into force on the twenty-first day after the day on which these Regulations are laid before Parliament.

(3) Otherwise, these Regulations come into force on exit day.

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(a) S.I. 2000/1813.

(b) 1972 c. 68. Section 2(2) was amended by sections 27(1)(a) and 33 of the Legislative and Regulatory Reform Act 2006 (c. 51), sections 3 and 8 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7), and S.I. 2009/3143.

(c) 1971 c. 77. Amended by paragraph 2 of Schedule 2 and Schedule 9 to the British Nationality Act 1981 (c. 61).

(d) 2002 c. 41. Section 109 was amended by S.I. 2011/1043.

## PART 2

### Leave to enter through Republic of Ireland

#### **Amendment of the Immigration (Control of Entry through Republic of Ireland) Order 1972**

**2.**—(1) The Immigration (Control of Entry through Republic of Ireland) Order 1972(a) is amended as follows.

(2) In article 2(1) (interpretation)(b), in the definition of “EEA State” omit “(other than the United Kingdom)”.

(3) In article 3(1)(b) (persons excluded from section 1(3) of the Act)(c), after paragraph (v) insert—

“(vi) he is a person who is an excluded person for the purposes of section 8B of the Act (persons excluded under international obligations)(d).”.

(4) In article 4 (restrictions and conditions on entry through Ireland)(e)—

(a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (2A)”;

(b) after paragraph (2) insert—

“(2A) This Article does not apply to any person who has leave or may be granted leave to enter or remain in the United Kingdom by virtue of Appendix EU to the immigration rules(f).”;

(c) after paragraph (8) insert—

“(8A) The restriction and condition mentioned in paragraphs (4) and (6B) shall cease to apply to a person if that person has leave or may be granted leave to enter or remain in the United Kingdom for the reason specified in paragraph (2A).”.

## PART 3

### Amendments to the Immigration (European Economic Area) Regulations 2016

#### **Amendments to the Immigration (European Economic Area) Regulations 2016**

**3.**—(1) The Immigration (European Economic Area) Regulations 2016(g) are amended as follows.

(2) In regulation 2(1) (general interpretation), in the definition of “EEA decision”, in the words following sub-paragraph (d), omit “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).”.

(3) In regulation 7(4) (family member), after “family members”, insert “and extended family members”.

(4) In the heading of regulation 9 (family members of British citizens), after “family members”, insert “and extended family members”.

(5) In regulation 9—

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(a) S.I. 1972/1610.

(b) The definition of “EEA State” was inserted by article 3(2) of the Immigration (Control of Entry through Republic of Ireland) (Amendment) Order 2014 (S.I. 2014/2475).

(c) There have been amendments to article 3 which are not relevant to this instrument.

(d) Section 8B was inserted into the Immigration Act 1971 by section 8 of the Immigration and Asylum Act 1999 (c. 33). There have been amendments to section 8B which are not relevant to this instrument.

(e) There have been amendments to article 4 which are not relevant to this instrument.

(f) Appendix EU was laid before Parliament on 20th July 2018 (CM 9675).

(g) S.I. 2016/1052. Amended by S.I. 2017/1, S.I. 2017/1242 and S.I. 2018/801.

- (a) after paragraph (1) insert—
    - “(1A) These Regulations apply to a person who is the extended family member (“EFM”) of a BC as though the BC were an EEA national if—
      - (a) the conditions in paragraph (2) are satisfied; and
      - (b) the EFM was lawfully resident in the EEA State referred to in paragraph (2)(a)(i).”
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (b), after “F”, insert “or EFM”;
    - (ii) in sub-paragraph (c), after “F”, insert “or EFM”;
    - (iii) in sub-paragraph (d), after “family member of BC” insert “or EFM was an extended family member of BC”;
    - (iv) in sub-paragraph (e), omit “their” and insert “F or EFM and BC’s”;
  - (c) in paragraph (3)—
    - (i) in sub-paragraph (b), after “F”, insert “or EFM”;
    - (ii) in sub-paragraph (c), after “F”, insert “or EFM”;
    - (iii) in sub-paragraph (d), after “F”, insert “or EFM”;
    - (iv) in sub-paragraph (e), after “F’s”, insert “or EFM’s”;
  - (d) in paragraph (4)—
    - (i) in sub-paragraph (a)—
      - (aa) after “F”, insert “or EFM”;
      - (bb) omit “or” at the end of the sub-paragraph;
    - (ii) omit sub-paragraph (b);
  - (e) in paragraph (5), in both places, after “F” insert “or EFM”.
- (6) In regulation 16 (derivative right to reside)—
- (a) in paragraph (6)(b), after “under the 1971 Act” insert “(but see paragraph (7A))”;
  - (b) in paragraph (7)(c)(iv), after “in the United Kingdom” insert “(but see paragraph (7A))”;
  - (c) after paragraph (7) insert—
    - “(7A) Leave to enter, or remain in, the United Kingdom under the 1971 Act which has been granted by virtue of Appendix EU to the immigration rules is not to be treated as leave for the purposes of paragraph (6)(b) or (7)(c)(iv).”.
- (7) In regulation 36(6) (appeal rights)—
- (a) after “family members”, insert “or extended family members”;
  - (b) in sub-paragraph (b), before “a qualifying EEA State residence card”, insert “in respect of a family member,”;
  - (c) after sub-paragraph (b) insert—
    - “(c) in respect of an extended family member—
      - (i) an EEA family permit; or
      - (ii) proof that—
        - (aa) the condition in regulation 9(1A)(b) is met;
        - (bb) the criteria to be a family member of the British citizen are met, and
        - (cc) the British citizen is residing, or did reside, in another EEA State as a worker, self-employed person, self-sufficient person or a student.”.

## **Transitional provision**

4. In any decision made after the day on which regulation 3 comes into force as to whether a person satisfies the conditions in regulation 9(2) of the Immigration (European Economic Area) Regulations 2016 (family members and extended family members), the amendments made by regulation 3(4) and (5) are to be treated as if they had been in force at all times relevant to such a decision.

6th March 2019

*Caroline Nokes*  
Minister of State  
Home Office

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision for nationals of the European Economic Area who have a right of residence in the United Kingdom by virtue of Appendix EU to the immigration rules. The Regulations also make provision for the family members of such individuals.

Such individuals may, if they satisfy certain conditions, obtain leave to enter or remain in the United Kingdom by virtue of Appendix EU to the immigration rules, which have been made specifically in connection with the United Kingdom's withdrawal from the European Union.

Regulation 2 amends article 3 of the Immigration (Control of Entry through Republic of Ireland) Order 1972 (S.I. 1972/1610) so that an individual who is excluded under international obligations is not entitled to enter the United Kingdom from Ireland without leave under common travel area legislation. Regulation 2 also amends article 4, which regulates the entry into the United Kingdom of certain categories of individuals arriving from Ireland, giving them permission by law to remain in the United Kingdom for a defined period (either 3 months or 7 days) but not to engage in occupation for reward or employment. The regulation inserts a new paragraph (2A) which adds a further category of individual to whom article 4 does not apply: a person who has, or may be granted, leave to enter or remain in the UK by virtue of Appendix EU to the immigration rules.

Regulation 3 amends the Immigration (Economic Area) Regulations 2016 ("the 2016 Regulations") so as to give effect to the judgment of the Court of Justice of the European Union in the case of *C-89/17 Banger*. It gives effect to the judgment in two ways: firstly, by amending regulations 2 and 36 of the 2016 Regulations to introduce a right of appeal against a decision to refuse extended family members residence documentation under regulations 12(4), 17(5) or 18(4); and, secondly, by amending regulations 7 and 9 of the 2016 Regulations to give extended family members who meet certain conditions the right to enter and reside in the UK, when accompanying a returning British citizen who has exercised treaty rights in another Member State.

Regulation 3 also provides that leave to enter or remain in the United Kingdom granted by virtue of Appendix EU to the immigration rules is not to be treated as "leave" for the purposes of regulation 16 of the 2016 Regulations. The effect of this is that such leave does not affect any right to reside that the individual may have under that regulation (which implements European law in relation to rights of residence that derive from a connection with a national of the European Economic Area).

Regulation 4 makes transitional provision in respect of the changes made by regulation 3 which give effect to the judgment of the Court of Justice of the European Union in the case of *C-89/17 Banger*.

An impact assessment has not been produced for these Regulations as no significant impact on business, charities, voluntary bodies or the public sector is foreseen.

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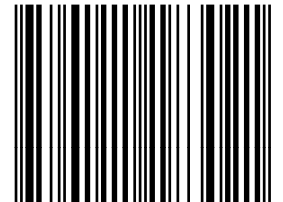


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