

2023 No. 12

IMMIGRATION

**The Immigration (Restrictions on Employment etc.)
(Amendment) (EU Exit) Regulations 2023**

<i>Made</i>	- - - -	<i>9th January 2023</i>
<i>Laid before Parliament</i>		<i>11th January 2023</i>
<i>Coming into force</i>	- -	<i>2nd February 2023</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 15(3) and (7) and 20(1) of the Immigration, Asylum and Nationality Act 2006(a), section 93(6) of, and paragraph 5(6) of Schedule 6 to, the Immigration Act 2016(b), section 9(1), (2) and (4) of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020(c) and sections 5 and 8(5) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020(d).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Immigration (Restrictions on Employment etc.) (Amendment) (EU Exit) Regulations 2023.

(2) These Regulations come into force on 2nd February 2023.

(3) Subject to paragraph (4), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(4) The amendments made by regulation 5(2)(b) and (c) have the same extent as the provisions they amend.

Amendment of the Immigration (Restrictions on Employment) Order 2007

2.—(1) The Immigration (Restrictions on Employment) Order 2007(e) is amended as follows.

(2) In article 4B (excusal from paying civil penalty: Home Office online right to work checking service)—

(a) for paragraph (2), substitute—

“(2) Subject to article 5, an employer is excused under this article from paying a penalty under section 15 of the 2006 Act—

(a) where the online right to work check confirms that the employee has leave to enter or remain on the date that the online right to work check is conducted, for the

(a) 2006 c. 13. See section 25(d) for the meaning of “prescribed”.

(b) 2016 c. 19; section 93(6) was amended by S.I. 2016/997.

(c) 2020 c. 1.

(d) 2020 c. 20.

(e) S.I. 2007/3290; relevant amending instruments are S.I. 2014/1183, S.I. 2018/1340, S.I. 2021/689 and S.I. 2022/242.

period for which the online right to work check confirms that the employee named in it is permitted to carry out the work in question;

- (b) where the online right to work check confirms that the employee has a right to work on the date of the check by virtue of a pending application, administrative review or appeal, for six months beginning with the date of the check.”;
- (b) in paragraph (3), for “paragraph (2)” in both places where it occurs, substitute “paragraph (2)(a)”.

Amendment of the Illegal Working Compliance Orders Regulations 2016

3.—(1) The Illegal Working Compliance Orders Regulations 2016(a) are amended as follows.

(2) In regulation 5A (right to work checks: Home Office online right to work checking service)—

- (a) in paragraph (2), for “provides that the employment is permitted”, substitute “confirms that the employee has leave to enter or remain on the date that the online right to work check is conducted.”;

- (b) after paragraph (3), insert—

“(4) Paragraph (2) does not apply where the online right to work check confirms that the person had a right to work on the date of the check by virtue of a pending application, administrative review or appeal.”.

Amendment of the Citizens’ Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020

4.—(1) The Citizens’ Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020(b) are amended as follows.

(2) In paragraph 4 of the Schedule (saving and modification of the Immigration (European Economic Area) Regulations 2016: regulation 27 on decisions taken on grounds of public policy, public security and public health), for “indefinite leave”, substitute “, or who is eligible for, indefinite leave”.

Amendment of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020

5.—(1) The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020(c) are amended as follows.

(2) In Schedule 4 (saving provision in relation to access to benefits and services)—

- (a) in paragraph 4(n) (saving with modifications of regulation 16 (derivative right to reside) in relation to a member of the post-transition period group)—

- (i) before paragraph (i), insert—

“(ai) in paragraph (3)(b), after “a worker” there were inserted “or a self-employed person”.”;

- (ii) after paragraph (i), insert—

“(ia) in paragraph (7), after sub-paragraph (c), there were inserted—

- (d) “self-employed person” does not include a person treated as a self-employed person under regulation 6(4);”;

(a) S.I. 2016/1058, amended by S.I. 2018/1340; there are other amending instruments, but none are relevant.

(b) S.I. 2020/1210.

(c) S.I. 2020/1309.

- (b) in paragraph 6 (exemption from being treated as “a person subject to immigration control” within the meaning of section 13 of the Asylum and Immigration Act 1996 (short title, interpretation, commencement and extent) for the purposes of housing legislation)–
 - (i) omit the “and” after sub-paragraph (b); and
 - (ii) after sub-paragraph (c), insert–
 - “; and
 - (d) determining whether a person is eligible for homelessness assistance by a local housing authority in Scotland under Part 2 of the Housing (Scotland) Act 1987(a).”
 - ;
- (c) in paragraph 7 (exemption from being treated as “a person subject to immigration control” within the meaning of section 118 of the Immigration and Asylum Act 1999 (housing authority accommodation) for the purposes of housing legislation)–
 - (i) omit the “and” after sub-paragraph (a); and
 - (ii) after sub-paragraph (b), insert–
 - “; and
 - (c) determining whether a person is eligible for an allocation of housing in Scotland under Part 1 of the Housing (Scotland) Act 1987.”.

Robert Jenrick
Minister of State
Home Office

9th January 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to legislation relating to immigration (including access to benefits and services).

Regulation 2 amends article 4B of the Immigration (Restrictions on Employment) Order 2007 (S.I. 2007/3290) (“the 2007 Order”) in relation to checks of immigration status undertaken by employers in relation to the employment of employees using the Home Office online right to work checking service.

Regulation 3 amends the Illegal Working Compliance Orders Regulations 2016 (S.I. 2016/1058) in a way which is analogous to the amendments made to the 2007 Order.

Regulation 4 ensures that decisions to deport EEA nationals and their family members with pre-settled status, but who satisfy the eligibility criteria for settled status under the EU Settlement Scheme (“EUSS”), are made in accordance with the EU Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens’ Rights Agreement (“the Agreements”) (see section 39 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) for the definitions of those Agreements). It ensures that said eligible persons benefit from the higher serious grounds of public policy or public security threshold, as set out in regulation 27 of the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) (“the 2016 Regulations”), in respect of conduct committed before the end of the post-EU exit transition period at 11pm on 31 December 2020.

Regulation 5(2)(a) inserts paragraphs (ai) and (ia) into paragraph 4(n) of Schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309) (“the 2020 Regulations”) to ensure such persons with pre-settled status granted under the EUSS, and

(a) 1987 c. 26; section 24(1) was amended by section 3(1)(a) of the Housing (Scotland) Act 2001 (asp 10).

who satisfy relevant criteria under the saved 2016 Regulations, are able to access benefits and services in accordance with the Agreements. Regulation 5(2)(b) and (c) inserts paragraphs 6(d) and 7(c) into Schedule 4 to the 2020 Regulations to include references to determining whether a person is eligible for homelessness assistance or an allocation of housing by a local housing authority in Scotland.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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£4.90

<http://www.legislation.gov.uk/id/uksi/2023/12>

ISBN 978-0-34-824352-9



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