
STATUTORY INSTRUMENTS

2016 No. 1052

The Immigration (European Economic Area) Regulations 2016

PART 2

EEA RIGHTS

Derivative right to reside

- 16.**—(1) A person has a derivative right to reside during any period in which the person—
- (a) is not an exempt person; and
 - (b) satisfies each of the criteria in one or more of paragraphs (2) to (6).
- (2) The criteria in this paragraph are that—
- (a) the person is the primary carer of an EEA national; and
 - (b) the EEA national—
 - (i) is under the age of 18;
 - (ii) resides in the United Kingdom as a self-sufficient person; and
 - (iii) would be unable to remain in the United Kingdom if the person left the United Kingdom for an indefinite period.
- (3) The criteria in this paragraph are that—
- (a) any of the person’s parents (“PP”) is an EEA national who resides or has resided in the United Kingdom;
 - (b) both the person and PP reside or have resided in the United Kingdom at the same time, and during such a period of residence, PP has been a worker in the United Kingdom; and
 - (c) the person is in education in the United Kingdom.
- (4) The criteria in this paragraph are that—
- (a) the person is the primary carer of a person satisfying the criteria in paragraph (3) (“PPP”); and
 - (b) PPP would be unable to continue to be educated in the United Kingdom if the person left the United Kingdom for an indefinite period.
- (5) The criteria in this paragraph are that—
- (a) the person is the primary carer of a British citizen (“BC”);
 - (b) BC is residing in the United Kingdom; and
 - (c) BC would be unable to reside in the United Kingdom or in another EEA State if the person left the United Kingdom for an indefinite period.
- (6) The criteria in this paragraph are that—
- (a) the person is under the age of 18;

- (b) the person does not have leave to enter, or remain in, the United Kingdom under the 1971 Act;
 - (c) the person’s primary carer is entitled to a derivative right to reside in the United Kingdom under paragraph (2), (4) or (5); and
 - (d) the primary carer would be prevented from residing in the United Kingdom if the person left the United Kingdom for an indefinite period.
- (7) In this regulation—
- (a) “education” excludes nursery education but does not exclude education received before the compulsory school age where that education is equivalent to the education received at or after the compulsory school age;
 - (b) “worker” does not include a jobseeker or a person treated as a worker under regulation 6(2);
 - (c) an “exempt person” is a person—
 - (i) who has a right to reside under another provision of these Regulations;
 - (ii) who has the right of abode under section 2 of the 1971 Act⁽¹⁾;
 - (iii) to whom section 8 of the 1971 Act⁽²⁾, or an order made under subsection (2) of that section⁽³⁾, applies; or
 - (iv) who has indefinite leave to enter or remain in the United Kingdom.
- (8) A person is the “primary carer” of another person (“AP”) if—
- (a) the person is a direct relative or a legal guardian of AP; and
 - (b) either—
 - (i) the person has primary responsibility for AP’s care; or
 - (ii) shares equally the responsibility for AP’s care with one other person who is not an exempt person.
- (9) In paragraph (2)(b)(iii), (4)(b) or (5)(c), if the role of primary carer is shared with another person in accordance with paragraph (8)(b)(ii), the words “the person” are to be read as “both primary carers”.
- (10) Paragraph (9) does not apply if the person with whom care responsibility is shared acquired a derivative right to reside in the United Kingdom as a result of this regulation prior to the other person’s assumption of equal care responsibility.
- (11) A person is not be regarded as having responsibility for another person’s care for the purpose of paragraph (8) on the sole basis of a financial contribution towards that person’s care.
- (12) A person does not have a derivative right to reside where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1), unless that decision is set aside or otherwise no longer has effect.

(1) Section 2 was amended by the British Nationality Act 1981, section 39(2), and the Immigration Act 1988, section 3(3).

(2) Section 8 was amended by the British Nationality Act 1981, section 39(4) and Schedule 4, paragraphs 2 and 5, the Immigration Act 1988, section 4, the 1999 Act, section 6, the Statute Law (Repeals) Act 1995 (c. 44), Schedule 1, Part II and the Immigration Act 2016 (c. 19), section 76(1).

(3) S.I. 1972/1613 was made under section 8(2) of the 1971 Act and has been amended by S.I. 1972/1613, 1975/617, 1977/693, 1982/1649, 1985/1809, 1997/1402, 2207, 2004/3171 and 2015/1866.