

## SCHEDULE 2

Regulation 56

### Saving and transitional provisions

#### PART 1

##### Interpretation

##### **Meaning of “commencement day”**

1. In this schedule “commencement day” means the time when these Regulations come into force.

#### PART 2

##### Saving and transitional provisions in relation to immigration and nationality

##### **British Nationality Act 1981**

2.—(1) The amendment made by regulation 7 does not affect the determination of an application made under section 5 of the British Nationality Act 1981 before commencement day which has not been determined before commencement day.

(2) For the purpose of determining such an application, section 5 applies as if the reference to a person who falls to be treated as a national of the United Kingdom for the purposes of the EU Treaties were a reference to a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

##### **Immigration and Asylum Act 1999**

3.—(1) Notwithstanding the repeal of section 84(2)(c) of the Immigration and Asylum Act 1999 by regulation 11(6)(a), until the appointed day section 84(2)(c) of that Act (but not sub-paragraph (i) of section 84(2)(c)) continues to have effect in respect of registered European lawyers.

(2) In this paragraph—

“appointed day” means the day on which immigration rules (within the meaning of the Immigration Act 1971(1)) which expressly state that they have effect in connection with the borders and immigration system following the withdrawal of the United Kingdom from the European Union come into force;

“registered European lawyer” means a person who has registered with a designated professional body before commencement day in reliance on domestic legislation implementing [Directive 98/5/EC](#) of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;

“designated professional body” has the meaning given in section 86 of the Immigration and Asylum Act 1999.

##### **Nationality, Immigration and Asylum Act 2002**

4.—(1) The amendments made by regulations 12(2) and 43 do not affect—

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(1) [1971 c. 77](#).

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- (a) the power in section 109 of the Nationality, Immigration and Asylum Act 2002 to make regulations which provide for, or make provision about, an appeal against an immigration decision taken before commencement day; or
- (b) the operation of any regulations made under that section before commencement day in relation to such an appeal.

(2) The amendments made by regulation 12(3) and regulation 33 do not affect the operation of any regulations made under section 126 of the Nationality, Immigration and Asylum Act 2002 before commencement day in relation to an application for a document referred to in section 126(2)(e).

(3) In sub-paragraph (1)(a) “immigration decision” has the meaning given by section 109 of the Nationality, Immigration and Asylum Act 2002 as it had effect immediately before commencement day.

#### **UK Borders Act 2007**

5.—(1) The amendment made by regulation 17(3) does not apply in relation to a relevant immigration decision or a relevant nationality decision made before commencement day.

(2) In sub-paragraph (1) “relevant immigration decision” and “relevant nationality decision” have the meaning given in section 56A of the UK Borders Act 2007 as it had effect immediately before commencement day.

#### **Detention Centre Rules 2001**

6. The amendment made by regulation 26(3) does not apply in respect of any letter to the European Court of Justice relating to proceedings that were the subject of a reference to that Court made before commencement day.

#### **Short-term Holding Facility Rules 2018**

7. The amendment made by regulation 44(3) does not apply in respect of any letter to the Court of Justice of the European Union relating to proceedings that were the subject of a reference to that Court made before commencement day.

## **PART 3**

### **Saving provisions in relation to asylum**

#### **Regulation (EU) No 439/2010**

8. Notwithstanding the revocation of Regulation (EU) No 439/2010 by regulation 54 and Part 2 of Schedule 1, Articles 21 (civil liability) and 22 (criminal liability) of that regulation continue to apply in respect of damage caused and criminal offences committed before commencement day.

#### **Requests for taking charge and taking back made to the UK before commencement day**

9.—(1) This paragraph applies where—

- (a) a request is made to the UK before commencement day under Regulation (EU) No 604/2013 or Regulation (EC) No 1560/2003 to take charge or take back a person to whom, when the request is made, one of the Dublin Family Provisions applies; and
- (b) a final decision in relation to the request is not taken before commencement day.

(2) Notwithstanding the revocation of Regulation (EC) No 1560/2003 by regulation 54 and Part 2 of Schedule 1, the provisions of that Regulation referred to in sub-paragraph (3) continue to have effect in relation to the request referred to in sub-paragraph (1), so far as is relevant.

(3) The provisions referred to in sub-paragraph (2) are—

- (a) Article 3 (processing requests for taking charge);
- (b) Article 4 (processing of requests for taking back);
- (c) Article 5(1) (negative reply);
- (d) Article 6 (positive reply);
- (e) Article 11(2) and (3) (situations of dependency).

(4) Notwithstanding the revocation of Regulation (EU) No 604/2013 by regulation 54 and Part 2 of Schedule 1, the provisions of that Regulation referred to in sub-paragraph (5) continue to have effect in relation to the request referred to in sub-paragraph (1), so far as relevant, subject to the modifications set out in sub-paragraph (6).

(5) The provisions referred to in sub-paragraph (4) are—

- (a) Article 2 (definitions);
- (b) Article 6(1) (best interests of the child);
- (c) Article 22(1) to (5) (replying to a take charge request);
- (d) Article 25(1) (replying to a take back request).

(6) The modifications referred to in sub-paragraph (4) are—

- (a) Article 6(1) is to be read as if the words after “a primary consideration” were omitted;
- (b) Article 22 is to be read as if paragraph (3) were omitted, but not sub-paragraphs (a)(i) and (b);
- (c) Article 25(1) is to be read as if, at the beginning, there were inserted “Except in a case where the take back request was not made within the periods laid down in paragraph 2 of Article 23 of this Regulation as it applied in the European Union immediately before the time when the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 come into force,”.

(7) The provisions referred to in sub-paragraphs (3) and (5), and any EU legislation to which those provisions refer, are to be construed for the purposes of this paragraph as if the United Kingdom continued to be a member State.

(8) For the purposes of this paragraph, “Dublin Family Provisions” means Article 8 (minors), 9 (family members who are beneficiaries of international protection), 10 (family members who are applicants for international protection), 11 (family procedure), 16 (dependent persons) or 17(2) (discretionary clauses) of Regulation (EU) No 604/2013.

## **Eurodac**

**10.**—(1) Notwithstanding the revocation of the Eurodac Regulation by regulation 54 and Part 2 of Schedule 1 the provisions of the Eurodac Regulation referred to in sub-paragraph (2) continue to have effect in relation to data obtained before commencement day from Eurodac by a competent authority of the United Kingdom.

(2) The provisions referred to in sub-paragraph (1) are—

- (a) Article 34(2), sub-paragraphs (a) to (d), (h) and (i) (data security);
- (b) Article 35(1) (prohibition of transfers of data to third countries etc.);
- (c) Article 36 (logging and documentation).

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(3) The provisions referred to in paragraph (2) are to be construed as if the United Kingdom continued to be a Member State.

(4) For the purposes of paragraph (2), references to provisions in the Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters are to be construed as references to relevant provisions in Part 3 of the Data Protection Act 2018(2).

(5) In this paragraph—

“Eurodac” means the system including a central fingerprint database for the European Union as described in Article 3 of the Eurodac Regulation;

“the Eurodac Regulation” means Regulation (EU) No 603/2013.

#### **Data transmitted to the UK before commencement day**

**11.**—(1) This paragraph applies in relation to information transmitted to the United Kingdom before commencement day under paragraph (1) of Article 34 of Regulation (EU) No 604/2013 (information sharing).

(2) Notwithstanding the revocation of Regulation (EU) No 604/2013 by regulation 54 and Part 2 of Schedule 1, the provisions of that Regulation referred to in sub-paragraph (3) continue to have effect in relation to the information, subject to the modification set out in sub-paragraph (4).

(3) The provisions referred to in sub-paragraph (2) are—

(a) Article 2 (definitions), so far as relevant to the provisions referred to in paragraph (b);

(b) Article 34(9) and (11).

(4) The modification referred to in sub-paragraph (2) is that Article 34(9) is to be read as if—

(a) in the second sub-paragraph, for “this Regulation or [Directive 95/46/EC](#)” there were substituted “this Regulation or the data protection legislation (within the meaning of section 3(9) of the Data Protection Act 2018(3)) as modified from time to time”;

(b) in the third sub-paragraph, “or receiving” were omitted.

(5) The provisions referred to in sub-paragraph (3) are to be construed as if the United Kingdom continued to be a member State.

#### **Data transmitted by the UK before commencement day**

**12.**—(1) This paragraph applies in relation to information transmitted by the United Kingdom before commencement day under paragraph (1) of Article 34 of Regulation (EU) No 604/2013 (information sharing).

(2) Notwithstanding the revocation of Regulation (EU) No 604/2013 by regulation 54 and Part 2 of Schedule 1, Article 34(8) continues to have effect in relation to the information, subject to the modification set out in sub-paragraph (3).

(3) The modification referred to in sub-paragraph (2) is that Article 34(8) is to be read as if—

(a) the last sentence were omitted;

(b) the United Kingdom continued to be a member State.

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(2) 2018 c. 12.

(3) 2018 c. 12.