
DRAFT STATUTORY INSTRUMENTS

2019 No.

The Immigration (European Economic Area Nationals) (EU Exit) Order 2019

PART 2

Leave to enter or remain

Chapter 1

Grant of leave to EEA and Swiss nationals

Interpretation

2. In this Chapter—

“the 1971 Act” means the Immigration Act 1971;

“control zone” means that part of the territory of another state in which immigration officers are empowered to exercise immigration controls by virtue of one or more of the International Treaties;

“EEA national” means a national of an EEA state;

“immigration officer” has the same meaning as in the Immigration Acts⁽¹⁾;

“International Treaties” means the following—

- (a) the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link, which was signed at Canterbury on 12th February 1986 and entered into force on 29th July 1987, together with its supplementary protocols and arrangements⁽²⁾;
- (b) the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic Concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link which was signed on 25th November 1991 and entered into force on 2nd August 1993⁽³⁾;
- (c) the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the Kingdom of Belgium and the Government of the French Republic concerning Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link, which was signed at Brussels on 15th December 1993 and entered into force on 1st December 1997, together with its Protocol⁽⁴⁾;
- (d) the Additional Protocol to the Sangatte protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French

⁽¹⁾ See section 61 of the UK Borders Act 2007 (c. 30).

⁽²⁾ Cm 1827.

⁽³⁾ Cm 2366.

⁽⁴⁾ Cm 3954.

Republic on the establishment of bureaux responsible for controls on persons travelling by train between the United Kingdom and France, which was signed at Brussels on 29th May 2000 and entered into force on 25th May 2001⁽⁵⁾;

- (e) the Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning the Implementation of Frontier Controls at the Sea Ports of Both Countries on the Channel and North Sea, which was signed at Le Touquet on 2nd February 2003 and entered into force on 1st February 2004⁽⁶⁾;
- (f) the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Belgium, concerning Immigration Controls on Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link which was signed at London on 3rd December 2018 and at Brussels on 18th December 2013 and entered into force on 1st October 2016⁽⁷⁾.

Grant of leave to EEA and Swiss nationals

- 3.—(1) A person to whom this article applies has leave to enter the United Kingdom.
- (2) This article applies to a person who—
- (a) is an EEA national or a national of Switzerland;
 - (b) requires leave to enter the United Kingdom or would require leave to enter if that person were not arriving on a local journey from within the common travel area;
 - (c) is travelling on a valid national identity card or a valid passport issued by an EEA state or Switzerland;
 - (d) does not otherwise have leave to enter the United Kingdom;
 - (e) does not have an entry clearance complying with the requirements of article 3 of the Immigration (Leave to Enter and Remain) Order 2000 (requirements)⁽⁸⁾;
 - (f) is not a person to whom article 4 of this Order applies;
 - (g) either—
 - (i) arrives at a port in the United Kingdom and presents the document mentioned in sub-paragraph (c) to an immigration officer or an automated gate;
 - (ii) enters a control zone and presents the document mentioned in sub-paragraph (c) to an immigration officer or an automated gate;
 - (iii) arrives in the United Kingdom on a local journey from the Republic of Ireland, or
 - (iv) otherwise arrives in the United Kingdom and either presents the document mentioned in sub-paragraph (c) to an immigration officer or disembarks in accordance with arrangements approved by an immigration officer pursuant to paragraph 27(1)(a) of Schedule 2 to the 1971 Act⁽⁹⁾, and
 - (h) does not apply for leave to enter the United Kingdom as a visitor or a short-term student within the meaning of the immigration rules⁽¹⁰⁾.

⁽⁵⁾ Cm 5586.

⁽⁶⁾ Cm 5832.

⁽⁷⁾ Cm 8807.

⁽⁸⁾ [S.I. 2000/1161](#). Article 3 was amended by [S.I. 2004/475](#).

⁽⁹⁾ Paragraph 27 was amended by section 31(2) of the Immigration, Asylum and Nationality Act 2006 ([c. 13](#)) and paragraph 1(2) of Schedule 5(1) to the Counter-Terrorism and Security Act 2015 ([c. 6](#)).

⁽¹⁰⁾ Laid before Parliament on 23rd May 1994 (HC 395), as amended.

Persons who may not obtain leave under article 3

4.—(1) This article applies to a person described in any of paragraphs (2) to (7).

(2) This paragraph applies to person who is subject to a deportation order made under section 5 of the 1971 Act (procedure for, and further provisions as to, deportation)(**11**) or a decision to make a deportation order under that section.

(3) This paragraph applies to a person who is an excluded person for the purposes of section 8B of the 1971 Act (persons excluded from the United Kingdom under certain instruments)(**12**).

(4) This paragraph applies to a person who is subject to an exclusion order made under regulation 23(5) of the Immigration (European Economic Area) Regulations 2016 (exclusion and removal from the United Kingdom).

(5) This paragraph applies to a person who is subject to a removal decision made under regulation 23(6) of the Immigration (European Economic Area) Regulations 2016.

(6) This paragraph applies to a person in respect of whom directions have been given by the Secretary of State for that person not to be given entry to the United Kingdom on the ground that the person's exclusion is conducive to the public good.

(7) This paragraph applies to a person in respect of whom a removal direction has been given under section 10(7) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom)(**13**).

Nature of leave granted by virtue of article 3

5. A person who has leave to enter by virtue of article 3 is to be treated for the purposes of the Immigration Acts and the immigration rules—

- (a) as if that person had been given the leave by notice in accordance with section 4 of the 1971 Act (administration of control)(**14**), and
- (b) as if the leave had been given before that person's arrival in the United Kingdom or entry into the control zone.

Duration and condition of leave

6. Leave by virtue of article 3 is given for a period of three months.

Chapter 2

Appendix EU to the immigration rules

Grant of leave by virtue of Appendix EU to the immigration rules

7. The Secretary of State may give or refuse leave to enter the United Kingdom to any person who seeks leave to enter the United Kingdom by virtue of Appendix EU to the immigration rules(**15**).

(11) Section 5 was amended by sections 39(6) and 52(7) of and paragraph 2 of Schedule 4 and Schedule 8 to, the British Nationality Act 1981 (c. 61), section 10 of, and paragraph 2 of Schedule 1 to, the Immigration Act 1988 (c. 14) and paragraph 2 of Schedule 2 to the Asylum and Immigration Act 1996 (c. 49). Section 8B was inserted by section 8 of the Immigration and Asylum Act 1999 (c. 33). It was amended by section 76(4), (5), (7), (8) and (9) of the Immigration Act 2016 (c. 19) and paragraph 1(2), (3), (4) and (5) of Schedule 3(1) to the Sanctions and Anti-Money Laundering Act 2018 (c. 13).

(12) Section 8B was inserted by section 8 of the Immigration and Asylum Act 1999 (c. 33). It was amended by section 76(4), (5), (7), (8) and (9) of the Immigration Act 2016 (c.19) and paragraph 1(2), (3), (4) and (5) of Schedule 3(1) to the Sanctions and Anti-Money Laundering Act 2018 (c. 13).

(13) 1999 c. 33. Section 10 was amended by section 1 of the Immigration Act 2014 (c. 22)

(14) Section 4 was amended by section 39(6) of, and paragraph 2 of Schedule 4 to, the British Nationality Act 1981 (c. 61), paragraph 45 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), section 62(2) of the Immigration Act 2016 (c. 19) and S.I. 1993/1813.

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

Amendments to the Immigration (Leave to Enter and Remain) Order 2000

- 8.**—(1) The Immigration (Leave to Enter and Remain) Order 2000⁽¹⁶⁾ is amended as follows.
- (2) In article 1(3) (interpretation) at the appropriate places insert the following definitions—
- ““Crown service” means service of the Crown, whether within Her Majesty’s dominions or elsewhere, under Her Majesty’s government in the United Kingdom or in a Northern Ireland department or under the Scottish Administration or under the Welsh Government;”;
- ““Her Majesty’s Forces” has the same meaning as in the Armed Forces Act 2006⁽¹⁷⁾;”.
- (3) In article 13(4) (lapsing of leave)—
- (a) before sub-paragraph (a), insert—
- “(za) where the holder has unlimited leave granted by virtue of Appendix EU to the immigration rules (including unlimited leave granted by virtue of Appendix EU before this paragraph comes into force), subject to article 13C, the unlimited leave lapses if the holder stays outside the United Kingdom and Islands for a continuous period of more than—
- (i) four years, in the case of unlimited leave granted by virtue of Appendix EU to the immigration rules as a Swiss national or a family member of a Swiss national;
- (ii) five years, in all other cases;”;
- (b) in sub-paragraph (a), for “subject to articles 13A and 13B”, substitute “in any other case and subject to articles 13A, 13B and 13C”;
- (c) in both places, after “United Kingdom” insert “and Islands”.
- (4) In article 13A (partners and children of members of HM Forces)—
- (a) in paragraph (1), after “United Kingdom” insert “and Islands”;
- (b) omit paragraph (4).
- (5) In article 13B (partners and children of certain Crown servants etc)—
- (a) in the heading, omit “certain”;
- (b) in paragraph (1)(b), after “indefinite leave” insert “, other than unlimited leave granted by virtue of Appendix EU to the immigration rules”;
- (c) in paragraph (2)(a), after “United Kingdom” insert “and Islands”;
- (d) in paragraph (3), for sub-paragraph (b) substitute—
- “(b) employment on Crown service.”.
- (6) After article 13B, insert—

“13C Crown servants etc with leave granted by virtue of Appendix EU to the immigration rules

- (1) Any period of time spent outside the United Kingdom and Islands by a person to whom this article applies does not count towards the period mentioned in article 13(4)(za) or 13(4)(a).
- (2) This article applies to a person who has leave granted by virtue of Appendix EU to the immigration rules and who is—
- (a) a member of Her Majesty’s Forces posted outside the United Kingdom and Islands;

⁽¹⁶⁾ S.I. 2000/1161, as amended by S.I. 1993/1813, 2003/2818, 2004/475, 2005/1159, 2010/957, 2013/1749, 2015/434, and 2016/1132.

⁽¹⁷⁾ 2006 c. 52.

- (b) a national of a member State, Iceland, Liechtenstein, Norway or Switzerland posted outside the United Kingdom and Islands in employment—
 - (i) on Crown service, or
 - (ii) in the British Council as a permanent member of that Council;
- (c) accompanying a person who is posted outside the United Kingdom and Islands—
 - (i) in employment on Crown service,
 - (ii) in employment in the British Council as a permanent member of that Council,
or
 - (iii) as a member of Her Majesty’s Forces.”.