

Draft Regulations laid before Parliament under paragraph 1(1)(a) of Schedule 4 to the European Union (Withdrawal Agreement) Act 2020, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No. ***

**EXITING THE EUROPEAN UNION
IMMIGRATION**

**The Citizens' Rights (Frontier
Workers) (EU Exit) Regulations 2020**

*Made - - - - - ***
Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8 and 11(1) of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”)(1) and section 9(2) of the Immigration Act 1971(2).

These are the first regulations to be made under section 8 of the 2020 Act. In accordance with paragraph 1(1)(a) of Schedule 4 to that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

PART 1

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

- (2) These Regulations come into force on the day after the day on which they are made except—
- (a) the provisions specified in paragraph (3) which come into force on IP completion day;
 - (b) the provisions specified in paragraph (4) which come into force on 1st July 2021.
- (3) The provisions specified in this paragraph are—

(1) 2020 c. 1. See also paragraph 17 of Schedule 4 to that Act which provides for combination of instruments which would otherwise be subject to different Parliamentary procedures.

(2) 1971 c. 77. Relevant amendments to section 9 were made by paragraph 2 of Schedule 4 to the British Nationality Act 1981 (c. 61).

- (a) Part 2, except for the provisions specified in paragraph (4);
 - (b) Part 4;
 - (c) regulation 24 in so far as it relates to an appeal against a decision made under Part 2 or Part 4; and
 - (d) regulation 28.
- (4) The provisions specified in this paragraph are regulations 6(1)(b) and 6(2).

Interpretation

2. In these Regulations—

“the 1971 Act” means the Immigration Act 1971;

“the 2016 Regulations” means the Immigration (European Economic Area) Regulations 2016(3);

“common travel area” has the same meaning as in section 1(3) of the 1971 Act (general principles);

“decision maker” means the Secretary of State or an immigration officer (as the case may be);

“EEA national” means a national of an EEA state who is not also a British citizen;

“EEA state” means—

- (a) a member State; or
- (b) Iceland, Liechtenstein, Norway or Switzerland;

“exclusion direction” means a direction issued by the Secretary of State for a person not to be given entry to the United Kingdom on the grounds that the person’s exclusion is conducive to the public good;

“frontier worker” has the meaning given in regulation 3;

“frontier worker permit” means a document which certifies a person’s frontier workers’ rights;

“frontier workers’ rights” means the rights a person has as a frontier worker under Part 2 of the withdrawal agreement, Part 2 of the EEA EFTA separation agreement or Part 2 of the Swiss citizens’ rights agreement(4);

“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

“relevant restriction decision” means—

- (a) an exclusion direction;
- (b) a deportation order made by virtue of regulation 15(1)(b);
- (c) an exclusion or deportation order made or treated as having been made by virtue of the 2016 Regulations, including those continued in effect by regulations made under section 7 or 9 of the European Union (Withdrawal Agreement) Act 2020; or
- (d) a deportation order made by virtue of section 3 of the 1971 Act;

“required biometrics” means the biometric information required to be provided by the Immigration (Provision of Physical Data) Regulations 2006(5);

(3) S.I. 2016/1052. Amended by S.I. 2017/1, S.I. 2017/1242, S.I. 2018/801, S.I. 2019/468, S.I. 2019/745 (amendments not in force) and S.I. 2019/1155.

(4) These agreements are defined in section 39 of the European Union (Withdrawal Agreement) Act 2020.

(5) S.I. 2006/1743. Amended by S.I. 2015/737, S.I. 2018/928 and S.I. 2019/745.

“self-employed person” means a person who is established in the United Kingdom in order to pursue activity as a self-employed person within the meaning of Article 49 on the Treaty of the Functioning of the European Union⁽⁶⁾;

“valid identity document” means—

- (a) a valid national identity card issued by an EEA state; or
- (b) a valid passport issued by an EEA state;

“worker” means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union.

Meaning of “frontier worker”

3.—(1) A person is a frontier worker for the purposes of these Regulations if they were, immediately before IP completion day, and have been continuously since IP completion day—

- (a) an EEA national;
- (b) not primarily resident in the United Kingdom; and
- (c) either—
 - (i) a worker in the United Kingdom;
 - (ii) a self-employed person in the United Kingdom; or
 - (iii) a person treated as a worker or self-employed person in the United Kingdom by virtue of regulation 4.

(2) For the purposes of paragraph (1), it does not matter if a person changes from one of the statuses in paragraph (1)(c) to another.

(3) For the purposes of paragraph (1), a person is to be treated as not being primarily resident in the United Kingdom at a particular point in time (“the relevant date”) if—

- (a) they have been present in the United Kingdom for less than 180 days in the twelve-month period immediately before the day on which the relevant date falls; or
- (b) they have returned to their country of residence at least—
 - (i) once in the six-month period immediately before the day on which the relevant date falls; or
 - (ii) twice in the twelve-month period immediately before the day on which the relevant date falls,

unless there are exceptional reasons for not having done so.

Retained worker or self-employed person status

4.—(1) A person who is no longer a worker in the United Kingdom is to be treated as such if the person, immediately following ceasing work in the United Kingdom—

- (a) is temporarily unable to work as the result of an illness or accident;
- (b) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided the person satisfies paragraph (5);
- (c) is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided the person satisfies paragraph (5);
- (d) is in involuntary unemployment and has embarked on vocational training;

⁽⁶⁾ OJ No C326, 26.10.12, p65.

- (e) has voluntarily ceased working and has embarked on vocational training that is related to the person's previous employment; or
 - (f) is temporarily unable to work due to pregnancy or childbirth, provided the person satisfies paragraph (5) 12 months after ceasing work and thereafter.
- (2) A person to whom paragraph (1)(c) applies may only retain worker status for a maximum of six months.
- (3) A person who is no longer a self-employed person in the United Kingdom is to be treated as such if the person, immediately following ceasing self-employment in the United Kingdom—
- (a) is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident;
 - (b) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for at least one year, provided the person satisfies paragraph (5);
 - (c) is in duly recorded involuntary unemployment after having worked as a self-employed person in the United Kingdom for less than one year, provided the person satisfies paragraph (5);
 - (d) is involuntarily no longer in self-employment and has embarked on vocational training;
 - (e) has voluntarily ceased self-employment and has embarked on vocational training that is related to the person's previous occupation; or
 - (f) is temporarily unable to engage in activities as a self-employed person due to pregnancy or childbirth, provided the person satisfies paragraph (5) 12 months after ceasing self-employment and thereafter.
- (4) A person to whom paragraph (3)(c) applies may only retain self-employed person status for a maximum of six months.
- (5) A person satisfies this paragraph where they have provided evidence that they continue to seek employment or self-employment in the United Kingdom.
- (6) A person may not retain the status of—
- (a) a worker under paragraph (1)(b); or
 - (b) a self-employed person under paragraph (3)(b),
- for longer than six months without providing compelling evidence of continuing to seek employment or self-employment in the United Kingdom.

PART 2

Frontier worker rights

Exemption from immigration control

5.—(1) Subject to paragraph (2), regulation 7 and Part 4 of these Regulations, a person does not require leave to enter or remain in the United Kingdom under the 1971 Act in any case in which that person is entitled to do so by virtue of their frontier workers' rights.

(2) This regulation does not apply to a person who is subject to a relevant restriction decision.

Right of admission

6.—(1) Subject to regulation 12, a frontier worker must be admitted to the United Kingdom on arrival if the frontier worker produces—

- (a) a valid identity document; and
 - (b) a valid frontier worker permit.
- (2) A frontier worker who is an Irish citizen is not required to produce a frontier worker permit.

Person claiming right of admission

7.—(1) This regulation applies to a person who claims a right of admission to the United Kingdom under regulation 6 where there is reason to believe—

- (a) that regulation 12 applies to that person; or
- (b) they are not entitled to be admitted under regulation 6.

(2) A person to whom this regulation applies is to be treated as if that person were a person seeking leave to enter the United Kingdom under the 1971 Act for the purposes of paragraphs 2, 3, 4, 7 and 16 to 18A of Schedule 2 to the 1971 Act (administrative provisions as to control on entry etc)(7) except that—

- (a) the reference in paragraph 2(1) to the purpose for which the immigration officer may examine any persons who have arrived in the United Kingdom is to be read as a reference to the purpose of determining whether the person is to be granted admission under these Regulations;
- (b) the reference in paragraph 3(1)(c) to the purpose for which the immigration officer may examine any persons embarking in the United Kingdom is to be read as a reference to the purpose of determining whether the person has exercised frontier workers' rights while in the United Kingdom;
- (c) the reference in paragraph 7 to a person who is, or may be, given leave to enter are to be read as references to a person who is, or may be, granted admission under these Regulations;
- (d) the reference in paragraph 16(1) to a decision to give or refuse leave to enter is to be read as a reference to a decision to grant or refuse admission under these Regulations; and
- (e) a medical examination is not to be carried out under paragraph 2 or paragraph 7 as a matter of routine and may only be carried out within three months of the person's arrival in the United Kingdom.

(3) For so long as a person to whom this regulation applies is detained under the powers conferred by Schedule 2 to the 1971 Act, or granted bail under Schedule 10 to the Immigration Act 2016(8) whilst liable to be detained under the powers conferred by Schedule 2 to the 1971 Act, the person is deemed not to have been admitted to the United Kingdom.

(7) The relevant parts of Schedule 2 were amended by Schedule 6 to the Criminal Justice Act 1972 (c. 71), paragraphs 2 and 3 of Schedule 4 to the British Nationality Act 1981 (c. 61), paragraphs 6, 8, 9 and 10 of the Schedule to the Immigration Act 1988 (c. 14), paragraphs 5, 7, 10 and 11 of Schedule 2, and Schedule 4 to the Asylum and Immigration Act 1996 (c. 49), paragraph 70 of Schedule 13 to the Access to Justice Act 1999 (c. 22), section 140, paragraphs 43, 56 and 58 to 63 of Schedule 14, and Schedule 16 to the Immigration and Asylum Act 1999 (c. 33), sections 63, 64 and 73 of, and paragraphs 3 and 4 of Schedule 7 to, the Nationality, Immigration and Asylum Act 2002 (c. 41), paragraph 149 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 1 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), sections 27 and 42 of, and Schedule 3 to the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 5, 7, 9 and 13 of, paragraphs 1 and 2 of Schedule 1, paragraph 1 of Schedule 2, and paragraphs 1, 2 and 3 of Schedule 8 to the Immigration Act 2014 (c. 22), sections 46 and 60 of the Immigration Act 2016 (c. 19), and S.I. 2010/21.

(8) 2016 (c. 19).

PART 3

Frontier worker permits

Issue of frontier worker permits

8.—(1) Subject to regulation 9, the Secretary of State must issue a frontier worker permit to a frontier worker on receipt of a valid application under this regulation.

(2) An application for a frontier worker permit must—

(a) be made online, submitted electronically using the relevant pages of www.gov.uk;

(b) be accompanied by—

(i) the required biometrics;

(ii) a valid identity document; and

(iii) evidence the applicant is a frontier worker; and

(c) be complete.

(3) An application under this Part is invalid and must be rejected if it is submitted otherwise than in accordance with the requirements in paragraph (2), (but see paragraph (4)).

(4) Where the Secretary of State receives an application that does not comply with the requirements of paragraph (2)(b) or (2)(c), the Secretary of State must not reject the application as invalid unless the applicant has been given the opportunity to remedy the deficiencies in the application and has failed to do so.

(5) A frontier worker permit—

(a) may be in electronic form;

(b) is proof of the holder's status as a frontier worker on the date of issue; and

(c) must state the name of the frontier worker and the date of issue.

Refusal to issue a frontier worker permit

9.—(1) The Secretary of State may refuse to issue a frontier worker permit where justified on grounds of public policy, public security or public health in accordance with regulation 18, on conducive grounds in accordance with regulation 19, or on grounds of misuse of rights in accordance with regulation 20.

(2) The Secretary of State must refuse to issue a frontier worker permit to a person subject to a relevant restriction decision.

Validity of frontier worker permits

10. A frontier worker permit issued under these Regulations is valid for—

(a) two years from the date of issue where issued to a frontier worker who is treated as a worker or self-employed person by virtue of regulation 4; or

(b) otherwise five years from the date of issue.

Renewal and revocation of permits

11.—(1) An application for renewal of a frontier worker permit must comply with regulation 8.

(2) The Secretary of State may refuse to renew or may revoke a frontier worker permit at any time—

- (a) on grounds of public policy, public security or public health in accordance with regulation 18;
 - (b) on conducive grounds in accordance with regulation 19;
 - (c) on grounds of misuse of rights in accordance with regulation 20;
 - (d) where the permit holder ceases to be or never was a frontier worker; or
 - (e) where the permit holder is subject to a relevant restriction decision.
- (3) An immigration officer may revoke a frontier worker permit at port or while the holder is outside the United Kingdom on the grounds set out in paragraph (2).

PART 4

Refusal of admission and removal

Refusal of admission

12.—(1) An immigration officer must refuse a person's admission to the United Kingdom by virtue of regulation 6 where—

- (a) the refusal to admit that person is justified on grounds of public policy, public security or public health in accordance with regulation 18, on conducive grounds in accordance with regulation 19, or on grounds of misuse of rights in accordance with regulation 20;
- (b) that person is subject to a relevant restriction decision; or
- (c) that person is not required to produce a frontier worker permit under regulation 6(1)(b) but the immigration officer is not satisfied that they are a frontier worker.

(2) When refusing admission under paragraph (1) an immigration officer must revoke that person's frontier worker permit.

Person refused admission

13.—(1) This regulation applies to a person who is in the United Kingdom and has been refused admission to the United Kingdom—

- (a) because they are not a frontier worker;
- (b) because they do not produce a valid identity document or valid frontier worker permit; or
- (c) in accordance with regulation 12.

(2) A person to whom this regulation applies is to be treated as if the person were a person refused leave to enter under the 1971 Act for the purpose of paragraphs 8, 10, 10A, 11 and 16 to 19 of Schedule 2 to the 1971 Act⁽⁹⁾ (and the provisions of Part 1 of Schedule 10 to the Immigration Act 2016 (immigration bail)⁽¹⁰⁾ apply accordingly), except that in paragraph 19 of Schedule 2 to the 1971 Act—

- (a) sub-paragraph (1) is to be read as if after the words “to enter the United Kingdom” there were inserted “under the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020”;

⁽⁹⁾ The relevant parts of Schedule 2 were amended by: section 39 of, and paragraph 3 of Schedule 4 to, the British Nationality Act 1981 (c. 61), section 10 of, and paragraph 9 of the Schedule to, the Immigration Act 1988 (c. 14), section 12 of, and paragraphs 6 to 8 of Schedule 2 and Schedule 4 to, the Asylum and Immigration Act 1996 (c. 49), sections 140 and 169 of, and paragraphs 43, 60 and 61 of Schedule 14 to, the Immigration and Asylum Act 1999, sections 63, 64, 73 and 114 of and paragraph 4 of Schedule 7 to the Nationality Immigration and Asylum Act 2002, section 42 of the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 4, 5, 9, 12 and 13 of, and paragraphs 1 and 2 of Schedule 1 and paragraph 1 of Schedule 2 to, the Immigration Act 2014 (c. 22), section 60 of the Immigration Act 2016.

⁽¹⁰⁾ 2016 c. 19.

- (b) in sub-paragraph (2), the references to a certificate of entitlement, entry clearance or work permit (in each place they occur) are to be read collectively as a reference to a frontier worker permit; and
- (c) sub-paragraph (3) is to be read as if after the words “to enter the United Kingdom” there were inserted “under the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020”.

Revocation of admission

14.—(1) This regulation applies to a person admitted to the United Kingdom under regulation 6 in circumstances where, under regulation 12(1), that person was not entitled to be admitted.

(2) Paragraph 6(2) of Schedule 2 to the 1971 Act applies to a person to whom this regulation applies, as though the references to—

- (a) that person’s examination under paragraph 2 of Schedule 2 to the 1971 Act were to that paragraph as applied by regulation 7(2)(a) and (e);
- (b) notices of leave to enter the United Kingdom were to a decision to admit that person to the United Kingdom under these Regulations; and
- (c) the cancellation of such a notice and the refusal of leave to enter were to revocation of the decision to admit that person to the United Kingdom under this regulation.

(3) Where a person’s admission to the United Kingdom is revoked, that person is to be treated as a person to whom admission to the United Kingdom has been refused and regulation 13 applies accordingly.

Removal

15.—(1) A frontier worker who has entered the United Kingdom may be removed if—

- (a) that person ceases to be a frontier worker;
- (b) the Secretary of State has decided that the person’s removal is justified on grounds of public policy, public security or public health in accordance with regulation 18; or
- (c) the Secretary of State has decided that the person’s removal is justified on grounds of misuse of rights under regulation 20.

(2) The notice of a decision under paragraph (1)(b) must state that upon execution of any deportation order arising from that decision, the person against whom the order was made is prohibited from entering the United Kingdom—

- (a) until the order is revoked; or
- (b) for the period specified in the order.

Person subject to removal

16.—(1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the United Kingdom by virtue of regulation 15(1)(b) that person may be detained under the authority of the Secretary of State pending a decision whether or not to remove the person under that regulation, and paragraphs 17 to 18A of Schedule 2 to the 1971 Act apply in relation to the detention of such a person as those paragraphs apply in relation to a person who may be detained under paragraph 16 of that Schedule.

(2) Where a decision is taken to remove a person by virtue of regulation 15(1)(a) or (c) the person is to be treated as if the person were a person to whom section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom)(**11**) applies.

(11) 1999 c. 23. Section 10 was amended by section 1 of the Immigration Act 2014.

(3) Where a decision is taken to remove a person by virtue of regulation 15(1)(b), the person is to be treated as if the person were a person to whom section 3(5)(a) of the 1971 Act(**12**) (liability to deportation) applies, and section 5 of that Act(**13**) (procedure for deportation) and Schedule 3 to that Act(**14**) (supplementary provision as to deportation) apply accordingly.

(4) A person who enters the United Kingdom in breach of a deportation order made by virtue of regulation 15(1)(b), or in circumstances where that person was not entitled to be admitted under regulation 12 is removable as an illegal entrant under Schedule 2 to the 1971 Act and the provisions of that Schedule apply accordingly.

(5) Where a deportation order has been made by virtue of regulation 15(1)(b) but the person is not removed under the order during the two year period beginning on the date on which the order is made, the Secretary of State may only take action to remove the person under the order at the end of that period if, having assessed whether there has been any material change in circumstances since the deportation order was made, the Secretary of State considers that the removal continues to be justified on the grounds of public policy, public security or public health in accordance with regulation 18.

Revocation of deportation orders

17.—(1) A deportation order made by virtue of these Regulations remains in force—

- (a) until the order is revoked under this regulation; or
- (b) for the period specified in the order.

(2) A person who is subject to a deportation order made by virtue of these Regulations may only apply to the Secretary of State to have it revoked on the basis that there has been a material change in the circumstances that justified the making of the order.

(3) An application under paragraph (2) must set out the material change in circumstances relied upon by the applicant and may only be made whilst the applicant is outside the United Kingdom.

(4) On receipt of an application under paragraph (2) the Secretary of State must revoke the order if the Secretary of State considers that the criteria for making such an order are no longer satisfied.

(5) The Secretary of State must take a decision on an application under paragraph (2) no later than six months after the date on which the application is received.

Decisions taken on grounds of public policy, public security and public health

18.—(1) In this regulation, a “relevant decision” means a decision taken under these Regulations on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken except on imperative grounds of public security in respect of a frontier worker who is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989(**15**).

(12) Section 3(5)(a) was amended by paragraphs 43 and 44 of Schedule 14 to the Immigration and Asylum Act 1999.

(13) Section 5 was amended by paragraph 2 of Schedule 4 to the British Nationality Act 1981, paragraph 2 of the Schedule to the Immigration Act 1988, paragraph 2 of Schedule 2 to the Asylum and Immigration Act 1996 and paragraph 37 of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

(14) Schedule 3 was amended by the Criminal Justice Act 1982 (c. 48), paragraphs 1 and 2 of Schedule 10 to the Immigration Act 1988, paragraph 10 of Schedule 10 to the Asylum and Immigration Act 1996, paragraph 13 of Schedule 2 to the Immigration and Asylum Act 1999, section 54 of, and paragraphs 43 and 68 of Schedule 14 to, the Nationality Asylum and Immigration Act 2002, paragraphs 7 and 8 of Schedule 7 to the Courts Act 2003, paragraph 150 of Schedule 8 and Schedule 10 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, section 34 of the Immigration, Asylum and Nationality Act 2006, section 53 of the Immigration Act 2014, section 60 of, paragraph 2(2) of Schedule 1 and paragraphs 9, 20 and 24 of Schedule 9 to, the Immigration Act 2016.

(15) Treaty Series No. 44 (1992) Cmd 1976 at <http://treaties.fco.gov.uk/docs/pdf/1992/TS0044.pdf>.

(4) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—

- (a) the decision must comply with the principle of proportionality;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person's previous criminal convictions do not in themselves justify the decision; and
- (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

(5) Before taking a relevant decision on the grounds of public policy or public security in relation to a frontier worker ("P") the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P's length of presence in the United Kingdom, P's social and cultural integration into the United Kingdom and the extent of P's links with P's country of origin.

(6) In the case of a relevant decision taken on grounds of public health—

- (a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010⁽¹⁶⁾; or
- (b) if the person concerned is in the United Kingdom, any disease occurring after the three month period beginning on the date on which the person arrived in the United Kingdom,

does not constitute grounds for the decision.

(7) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in the Schedule (considerations of public policy, public security and the fundamental interests of society etc).

Decisions taken on conducive grounds

19.—(1) This regulation applies to conduct taking place after IP completion day.

(2) A decision under this regulation may be taken on the ground that the decision is conducive to the public good.

Misuse of frontier workers' rights

20.—(1) The misuse of frontier workers' rights occurs where a person—

- (a) observes the requirements of these Regulations in circumstances which do not achieve the purpose of the withdrawal agreement, the EEA EFTA separation agreement or the Swiss citizens' rights agreement as they relate to frontier workers' rights; and
- (b) intends to obtain an advantage from these Regulations by engaging in conduct which artificially creates the conditions required to satisfy the criteria set out in these Regulations.

(2) Such misuse includes attempting to remain in the United Kingdom as a frontier worker for purposes other than exercising frontier workers' rights.

⁽¹⁶⁾ S.I. 2010/659.

(3) The Secretary of State may take a decision on the grounds of misuse of rights where there are reasonable grounds to suspect the misuse of frontier workers' rights and it is proportionate to do so.

(4) This regulation may not be exercised systematically.

PART 5

Administrative review and appeals

Administrative review

21.—(1) A person (“P”) may apply to the Secretary of State for a review of an eligible decision.

(2) An eligible decision is a decision to—

- (a) refuse to issue or renew a frontier worker permit; or
- (b) revoke a frontier worker permit under regulation 11(3),

on the grounds that P is not a frontier worker.

(3) Where a valid application is made in accordance with regulation 22 the Secretary of State must withdraw the eligible decision and make a new decision where satisfied that P is a frontier worker.

(4) A person may not apply for a review where they have waived their right to do so by signing an administrative review waiver form.

(5) A person may only apply for a review of an eligible decision once.

(6) Where the Secretary of State withdraws the eligible decision a further application for administrative review may be made in respect of any new eligible decision.

(7) The Secretary of State must not consider whether the applicant is entitled to leave to enter or remain in the United Kingdom on some other basis and nothing in these Regulations shall be taken to mean that the applicant may make or vary an application for leave, or make a protection or human rights claim, by seeking an administrative review.

Applications for administrative review

22.—(1) An application for review under regulation 21 must—

- (a) be made online, submitted electronically using the relevant pages of www.gov.uk;
- (b) be submitted within 28 calendar days of the date of issue of the eligible decision (except where paragraph (5) applies), not including the date of issue;
- (c) be accompanied by—
 - (i) the fee, if any, required to be paid by virtue of regulations made under section 68 of the Immigration Act 2014⁽¹⁷⁾; and
 - (ii) a valid identity document.

(2) An application submitted otherwise than in accordance with this regulation must be rejected as invalid and must not be considered.

(3) An applicant may withdraw an application at any time prior to decision.

(4) An application is deemed to be withdrawn where an applicant submits a further application for a frontier worker permit under regulation 8.

(17) 2014 c. 22.

(5) Where the applicant is present in the United Kingdom and is held in immigration detention on the date of the eligible decision the application must be submitted within 7 calendar days of the eligible decision.

Removal pending review

23.—(1) A person who has submitted a valid application under regulation 22, or who has not yet submitted an application but is within time to do so, may not be removed from the United Kingdom until that application has been determined or rejected as invalid.

(2) This regulation does not apply to a person who has withdrawn their application under regulation 22(3).

Amendment of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

24.—(1) The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020(18) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the 2002 Act”, insert—

““the 2020 Regulations” means the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020;”;

(ii) after the definition of “appellant”, insert—

““frontier worker” has the meaning given in regulation 3 of the 2020 Regulations;

“frontier worker permit” has the meaning given in regulation 2 of the 2020 Regulations;”;

(iii) after the definition of “the Tribunal”, insert—

““valid identity document” means—

(a) a valid national identity card issued by an EEA state, or

(b) a valid passport issued by an EEA state.”;

(b) after paragraph (1), insert—

“(1A) For the purposes of the definition of “valid identity document”, “EEA state” means—

(a) a member State, or

(b) Iceland, Liechtenstein, Norway or Switzerland.”.

(3) In Part 2, after the heading to Chapter 1 of that Part, insert—

“Decisions other than those relating to frontier workers”.

(4) In regulation 6 (right of appeal against decisions to make a deportation order), in the heading, after “order” insert “in respect of a person other than a person claiming to be a frontier worker”.

(5) After regulation 6, insert—

“Decisions relating to frontier workers

Right of appeal against decisions relating to issue, renewal or revocation of frontier worker permits

- 6A.** A person may appeal against a decision—
- (a) to refuse to issue a frontier worker permit to them,
 - (b) to refuse to renew their frontier worker permit, or
 - (c) to revoke their frontier worker permit.

Right of appeal against decisions to refuse frontier workers admission to the United Kingdom

- 6B.**—(1) A person may appeal against a decision made under regulation 12 of the 2020 Regulations (a “refusal of admission decision”).
- (2) But a person cannot bring an appeal under paragraph (1) without producing—
 - (a) a valid identity document, or
 - (b) where paragraph (3) applies, sufficient evidence to satisfy the Secretary of State that they are a frontier worker.
 - (3) This paragraph applies where—
 - (a) the refusal of admission decision was made before 1st July 2021, or
 - (b) the person bringing the appeal is an Irish citizen.

Right of appeal against decision to revoke admission to the United Kingdom

- 6C.**—(1) A person who has been admitted to the United Kingdom under regulation 6 of the 2020 Regulations may appeal against a decision under regulation 14 of those Regulations to revoke that admission.
- (2) But a person cannot bring an appeal under paragraph (1) without producing a valid identity document.

Right of appeal against certain decisions to remove frontier workers from the United Kingdom

- 6D.**—(1) A frontier worker who has entered the United Kingdom may appeal against a decision to remove that person taken by virtue of regulation 15(1)(a) or (c) of the 2020 Regulations.
- (2) But a person cannot bring an appeal under paragraph (1) without producing a valid identity document.

Right of appeal against decisions to make deportation order in respect of frontier workers

- 6E.**—(1) A frontier worker who has entered the United Kingdom may appeal against a decision to make a deportation order under section 5(1) of the 1971 Act in respect of them.
- (2) But paragraph (1) does not apply to a person if the decision to remove that person was taken under regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016.
 - (3) In addition, a person cannot bring an appeal under paragraph (1) without producing—

- (a) a valid identity document, and
- (b) if they do not have a valid frontier worker permit, sufficient evidence to satisfy the Secretary of State that they are a frontier worker.

(4) For the purposes of paragraph (3)(b), a person is to be treated as having a valid frontier worker permit if they would hold such a permit but for its revocation following a decision to make a deportation order under section 5(1) of the 1971 Act in respect of them.

Alternative evidence of identity and nationality

6F. Where a provision of this Part requires a person to hold or produce a valid identity document, the Secretary of State may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required document due to circumstances beyond the person's control.”.

(6) In regulation 8 (grounds of appeal)—

(a) in paragraph (2)—

- (i) in paragraph (a), for “or 25(2)” substitute “, 24(3), 25(2) or 25(3)”;
- (ii) in paragraph (b), for “or 24(2)” substitute “, 23(3), 24(2) or 24(3)”;

(b) in paragraph (3), after sub-paragraph (d), insert—

- “(e) where the decision is mentioned in regulation 6A, 6B, 6C or 6D, it is not in accordance with regulation 9, 11, 12, 14, 15(1)(a) or 15(1)(c) of the 2020 Regulations (as the case may be);
- (f) where the decision is mentioned in regulation 6E, it is not in accordance with section 3(5) or 3(6) of the 1971 Act, or regulation 15(1)(b) of the 2020 Regulations (as the case may be).”

(7) In regulation 13 (pending appeal), after paragraph (4), insert—

“(4A) An appeal under regulation 6A is to be treated as abandoned if the appellant is issued with a frontier worker permit.

“(4B) An appeal under regulation 6B is to be treated as abandoned if the appellant is admitted to the United Kingdom under regulation 6 of the 2020 Regulations.”.

Amendment of the Special Immigration Appeals Commission (Procedure) Rules 2003

25.—(1) The Special Immigration Appeals Commission (Procedure) Rules 2003(19) are amended as follows.

(2) In rule 8(4E) (time limit for appealing), for the definition of “relevant rules” substitute—

““relevant rules” means—

- (a) residence scheme immigration rules or relevant entry clearance immigration rules (within the meanings given in section 17 of the European Union (Withdrawal Agreement) Act 2020), or
- (b) the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (see regulations 21 to 23 of those Regulations).”.

Amendment of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

26.—(1) The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014⁽²⁰⁾ are amended as follows.

(2) In rule 19 (notice of appeal), for paragraph (3E), substitute—

“(3E) In this rule, “the relevant rules” means—

- (a) residence scheme immigration rules or relevant entry clearance immigration rules (within the meanings given in section 17 of the European Union (Withdrawal Agreement) Act 2020), or
- (b) the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (see regulations 21 to 23 of those Regulations).”.

PART 6

Consequential amendments

Amendment of the Immigration (Provision of Physical Data) Regulations 2006

27.—(1) The Immigration (Provision of Physical Data) Regulations 2006⁽²¹⁾ are amended as follows.

(2) In regulation 2 in the definition of “application”—

- (a) at the end of paragraph (d) omit “or”;
- (b) after paragraph (e) insert—
“; or
- (f) an application for a frontier worker permit under the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020;”.

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

28.—(1) The Immigration (Control of Entry through Republic of Ireland) Order 1972⁽²²⁾ is amended as follows.

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

- (a) in paragraph (1) for “paragraph (2) and (2A)” substitute “paragraphs (2), (2A) and (2B)”
- (b) after paragraph (2A) insert—

“(2B) This Article does not apply to a person who is a frontier worker under regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.”.

Date

Name
Parliamentary Under Secretary of State
Home Office

⁽²⁰⁾ S.I. 2014/2604: Amended by S.I. 2020/61.

⁽²¹⁾ S.I. 2006/1743. Amended by S.I. 2011/1779, S.I. 2015/737 and S.I. 2018/928.

⁽²²⁾ 1972/1610. Amended by S.I. 1980/1859, S.I. 1982/1028, S.I. 2000/1776, S.I. 2014/2475, S.I. 2019/468 and S.I. 2019/745.

SCHEDULE

Regulation 18

Considerations of public policy, public security and the fundamental interests of society etc.

Considerations of public policy and public security

1. The United Kingdom enjoys considerable discretion, acting within the parameters set by the withdrawal agreement, the EEA EFTA separation agreement or the Swiss citizens' rights agreement, to define its own standards of public policy and public security, for purposes tailored to its individual context from time to time.

Application of paragraph 1 to the United Kingdom

2. A frontier worker having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.

3. Where a frontier worker has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society.

4. Little weight is to be attached to the integration of a frontier worker within the United Kingdom if the alleged integrating links were formed at or around the same time as—

- (a) the commission of a criminal offence;
- (b) an act otherwise affecting the fundamental interests of society;
- (c) the frontier worker was in custody.

5. The removal from the United Kingdom of a frontier worker who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the frontier worker has successfully reformed or rehabilitated) is less likely to be proportionate.

6. It is consistent with public policy and public security requirements in the United Kingdom that decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including—

- (a) entering, attempting to enter or assisting another person to enter or attempt to enter, a marriage, civil partnership or durable partnership of convenience; or
- (b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, frontier workers' rights.

The fundamental interests of society

7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include—

- (a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the common travel area;
- (b) maintaining public order;
- (c) preventing social harm;
- (d) preventing the evasion of taxes and duties;
- (e) protecting public services;

- (f) excluding or removing a frontier worker with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;
- (g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension);
- (h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 18;
- (i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;
- (j) protecting the public;
- (k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom);
- (l) countering terrorism and extremism and protecting shared values.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provisions for frontier workers in order to fulfil the United Kingdom's obligations under the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement (see section 39 of the European Union (Withdrawal Agreement) Act 2020 for definitions of each of these agreements).

These Regulations provide for EEA nationals who, by 31 December 2020, are working or self-employed in the United Kingdom but living elsewhere ("frontier workers") to continue to work in the United Kingdom for as long as they remain a frontier worker. These Regulations also provide for the restriction of those rights and establishes a scheme for frontier worker permits.

Part 1 (preliminary: regulations 1 to 4) defines the personal scope of these Regulations and the terms used throughout. Regulation 3 defines 'frontier worker' and regulation 4 sets out the circumstances in which a person is to be treated as a frontier worker during a temporary break from work or self-employment.

Part 2 (frontier worker rights: regulations 5 to 7) establishes that frontier workers are exempt from the need to have leave to enter or remain in the United Kingdom while entering or remaining for the purpose of frontier working, unless subject to a relevant restriction decision defined in regulation 2. Regulation 6 provides for the right of admission to the United Kingdom subject to certain conditions.

Part 3 (frontier worker permit: regulations 8 to 11) establishes a scheme for frontier worker permits, which evidence frontier workers' rights under these Regulations and, after 30 June 2021, are necessary for a frontier worker to be admitted to the United Kingdom as a frontier worker. Regulation 8 sets out the process for applying for a frontier worker permit. Permits will be valid for 2 or 5 years and will be renewable indefinitely under regulation 11. An application for a permit, or renewal of a permit, may be refused or a permit revoked on grounds set out in this Part.

Part 4 (refusal of admission and removal: regulations 12 to 20) sets out the circumstances in which frontier workers' rights may be restricted. Frontier workers may be removed from the United Kingdom on public policy, public security or public health grounds for conduct committed before

the end of the implementation period under regulation 18, and where conducive to the public good for conduct committed thereafter under regulation 19. Frontier workers may also be removed where they have misused their frontier workers' rights under regulation 20.

Regulations 21 to 23 provide a right to apply for administrative review of eligible decisions, defined in regulation 21. Regulations 24 to 26 provide rights of appeal against decisions taken under these Regulations by amending the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. Subject to certain conditions, a person can appeal against a decision to refuse to issue, renew or revoke a frontier worker permit; refuse or revoke their admission; or remove or deport them from the United Kingdom.

Part 6 (consequential amendments: regulations 27 and 28) allows for biometric information to be taken in frontier worker permit applications and excludes frontier workers from the restrictions imposed by Article 4 of the Immigration (Control of Entry through Republic of Ireland) Order 1972.