



# European Union (Withdrawal Agreement) Act 2020

## 2020 CHAPTER 1

### PART 3

#### CITIZENS' RIGHTS

##### *Rights in relation to entry and residence*

#### **7 Rights related to residence: application deadline and temporary protection**

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for any of the following purposes—
- (a) specifying the deadline that applies for the purposes of—
    - (i) the first sub-paragraph of Article 18(1)(b) of the withdrawal agreement (deadline for the submission of applications for the new residence status described in Article 18(1));
    - (ii) the first sub-paragraph of Article 17(1)(b) of the EEA EFTA separation agreement (deadline for the submission of applications for the new residence status described in Article 17(1));
    - (iii) the first sentence of Article 16(1)(b) of the Swiss citizens' rights agreement (deadline for the submission of applications for the new residence status described in Article 16(1));
  - (b) implementing Article 18(2) of the withdrawal agreement (protection for Union citizens etc. in the period prior to the deadline for the submission of applications for the new residence status described in Article 18(1));
  - (c) implementing Article 17(2) of the EEA EFTA separation agreement (protection for EEA EFTA nationals etc. in the period prior to the deadline for the submission of applications for the new residence status described in Article 17(1));

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- (d) implementing Article 16(2) of the Swiss citizens' rights agreement (protection for Swiss nationals etc. in the period prior to the deadline for the submission of applications for the new residence status described in Article 16(1));
  - (e) implementing Article 18(3) of the withdrawal agreement (protection for Union citizens etc. pending a final decision on an application for the new residence status described in Article 18(1));
  - (f) implementing Article 17(3) of the EEA EFTA separation agreement (protection for EEA EFTA nationals etc. pending a final decision on an application for the new residence status described in Article 17(1));
  - (g) implementing Article 16(3) of the Swiss citizens' rights agreement (protection for Swiss nationals etc. pending a final decision on an application for the new residence status described in Article 16(1)).
- (2) If the Minister considers it appropriate, regulations under subsection (1) relating to the implementation of a provision mentioned in subsection (1)(b), (c) or (d) may be made so as to apply both to—
- (a) persons to whom the provision in question applies, and
  - (b) persons to whom that provision does not apply but who may be granted leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules (see section 17) and who do not have such leave.
- (3) If the Minister considers it appropriate, regulations under subsection (1) relating to the implementation of a provision mentioned in subsection (1)(e), (f) or (g) may be made so as to apply both to—
- (a) persons to whom the provision in question applies, and
  - (b) persons to whom that provision does not apply but who make an application for leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules.
- (4) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.

**Commencement Information**

**II** S. 7 in force at 19.5.2020 by S.I. 2020/518, reg. 2(a)

## 8 Frontier workers

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purpose of implementing any of the following—
- (a) Articles 24(3) and 25(3) of the withdrawal agreement (rights of employed and self-employed frontier workers) other than as regards rights enjoyed as workers (see section 14(1));
  - (b) Articles 23(3) and 24(3) of the EEA EFTA separation agreement (rights of employed and self-employed frontier workers) other than as regards rights enjoyed as workers (see section 14(2));
  - (c) Article 20(2) of the Swiss citizens' rights agreement (rights of frontier workers to enter and exit).
- (2) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purpose of implementing any of the following—

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- (a) Article 26 of the withdrawal agreement (issue of documents);
  - (b) Article 25 of the EEA EFTA separation agreement (issue of documents);
  - (c) Article 21(1)(a) and (2) of the Swiss citizens' rights agreement (issue of documents).
- (3) The power to make regulations under subsection (1) or (2) may (among other things) be exercised by modifying any provision made by or under the Immigration Acts.

#### Commencement Information

**I2** S. 8 in force at 19.5.2020 by S.I. 2020/518, reg. 2(b)

## 9 Restrictions of rights of entry and residence

- (1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purpose of implementing any of the following—
- (a) Article 20(1), (3) and (4) of the withdrawal agreement (restrictions of the rights of entry and residence);
  - (b) Article 19(1), (3) and (4) of the EEA EFTA separation agreement (restrictions of the rights of entry and residence);
  - (c) Articles 17(1) and (3) and 20(3) of the Swiss citizens' rights agreement (restrictions of the rights of entry and residence).
- (2) If the Minister considers it appropriate, regulations under subsection (1) relating to the implementation of a provision mentioned in subsection (1)(a), (b) or (c) may be made so as to apply both to—
- (a) persons to whom the provision in question applies, and
  - (b) persons to whom that provision does not apply but who—
    - (i) have entry clearance granted by virtue of relevant entry clearance immigration rules (see section 17),
    - (ii) have leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules (see section 17), or
    - (iii) otherwise have leave to enter granted after arriving with entry clearance granted by virtue of relevant entry clearance immigration rules.
- (3) In subsection (2)(b), references to a person who has entry clearance or leave to enter or remain include references to a person who would have had entry clearance or leave to enter or remain but for—
- (a) the making of a deportation order under section 5(1) of the Immigration Act 1971, or
  - (b) the making of any other decision made in connection with restricting the right of the person to enter the United Kingdom.
- (4) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made—
- (a) by or under the Immigration Acts, or
  - (b) under other primary legislation.

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### Commencement Information

**I3** S. 9 in force at 19.5.2020 by S.I. 2020/518, reg. 2(c)

## 10 Retention of existing grounds for deportation

(1) Section 3 of the Immigration Act 1971 (general provisions for regulation and control) is amended in accordance with subsections (2) to (4).

(2) After subsection (5) insert—

“(5A) The Secretary of State may not deem a relevant person's deportation to be conducive to the public good under subsection (5) if the person's deportation—

- (a) would be in breach of the obligations of the United Kingdom under Article 20 of the EU withdrawal agreement, Article 19 of the EEA EFTA separation agreement, or Article 17 or 20(3) of the Swiss citizens' rights agreement, or
- (b) would be in breach of those obligations if the provision in question mentioned in paragraph (a) applied in relation to the person.”

(3) After subsection (6) insert—

“(6A) A court may not recommend under subsection (6) that a relevant person be deported if the offence for which the person was convicted consisted of or included conduct that took place before IP completion day.”

(4) After subsection (9) insert—

“(10) For the purposes of this section, a person is a “relevant person”—

- (a) if the person is in the United Kingdom (whether or not they have entered within the meaning of section 11(1)) having arrived with entry clearance granted by virtue of relevant entry clearance immigration rules,
- (b) if the person has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
- (c) if the person may be granted leave to enter or remain in the United Kingdom as a person who has a right to enter the United Kingdom by virtue of—
  - (i) Article 32(1)(b) of the EU withdrawal agreement,
  - (ii) Article 31(1)(b) of the EEA EFTA separation agreement, or
  - (iii) Article 26a(1)(b) of the Swiss citizens' rights agreement,
 whether or not the person has been granted such leave, or
- (d) if the person may enter the United Kingdom by virtue of regulations made under section 8 of the European Union (Withdrawal Agreement) Act 2020 (frontier workers), whether or not the person has entered by virtue of those regulations.

(11) In this section—

“EEA EFTA separation agreement” and “Swiss citizens' rights agreement” have the same meanings as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act);

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“relevant entry clearance immigration rules” and “residence scheme immigration rules” have the meanings given by section 17 of the European Union (Withdrawal Agreement) Act 2020.”

- (5) In section 33 of the UK Borders Act 2007 (exceptions to automatic deportation), after subsection (6A), insert—

“(6B) Exception 7 is where—

- (a) the foreign criminal is a relevant person, and
- (b) the offence for which the foreign criminal was convicted as mentioned in section 32(1)(b) consisted of or included conduct that took place before IP completion day.

(6C) For the purposes of subsection (6B), a foreign criminal is a “relevant person”—

- (a) if the foreign criminal is in the United Kingdom (whether or not they have entered within the meaning of section 11(1) of the Immigration Act 1971) having arrived with entry clearance granted by virtue of relevant entry clearance immigration rules,
- (b) if the foreign criminal has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
- (c) if the foreign criminal may be granted leave to enter or remain in the United Kingdom as a person who has a right to enter the United Kingdom by virtue of—
  - (i) Article 32(1)(b) of the EU withdrawal agreement,
  - (ii) Article 31(1)(b) of the EEA EFTA separation agreement, or
  - (iii) Article 26a(1)(b) of the Swiss citizens' rights agreement,
 whether or not the foreign criminal has been granted such leave, or
- (d) if the foreign criminal may enter the United Kingdom by virtue of regulations made under section 8 of the European Union (Withdrawal Agreement) Act 2020 (frontier workers), whether or not the foreign criminal has entered by virtue of those regulations.

(6D) In this section—

“EEA EFTA separation agreement” and “Swiss citizens' rights agreement” have the same meanings as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act);

“relevant entry clearance immigration rules” and “residence scheme immigration rules” have the meanings given by section 17 of the European Union (Withdrawal Agreement) Act 2020.”

- (6) In section 3(10) of the Immigration Act 1971 and section 33(6C) of the UK Borders Act 2007 (for which see subsections (4) and (5) above), references to having leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules include references to having such leave granted by virtue of those rules before section 17 comes into force.

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#### Commencement Information

**I4** S. 10 in force at 31.1.2020 by S.I. 2020/75, reg. 4(e)

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*Changes to legislation: There are currently no known outstanding effects for the European Union (Withdrawal Agreement) Act 2020, Cross Heading: Rights in relation to entry and residence. (See end of Document for details)*

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## 11 Appeals etc. against citizens' rights immigration decisions

- (1) A Minister of the Crown may by regulations make provision for, or in connection with, appeals against citizens' rights immigration decisions of a kind described in the regulations.
- (2) For the purposes of this section, each of the following is a “citizens' rights immigration decision”—
  - (a) a decision made in connection with entry clearance by virtue of relevant entry clearance immigration rules (see section 17);
  - (b) a decision made in connection with leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules (see section 17);
  - (c) a decision made in connection with entry clearance for the purposes of acquiring leave to enter or remain in relation to a healthcare right of entry;
  - (d) a decision made in connection with leave to enter or remain in the United Kingdom in relation to a healthcare right of entry;
  - (e) a decision made in connection with a right to enter or remain in the United Kingdom by virtue of regulations made under section 8 (frontier workers);
  - (f) a decision to make, or a refusal to revoke, a deportation order under section 5(1) of the Immigration Act 1971 in relation to a relevant person;
  - (g) any other decision made in connection with restricting the right of a relevant person to enter the United Kingdom.
- (3) A Minister of the Crown may also by regulations make provision for, or in connection with, reviews (including judicial reviews) of decisions within subsection (2)(g).
- (4) The power to make regulations under subsection (1) or (3) may (among other things) be exercised by modifying any provision made by or under an enactment.
- (5) Such regulations may, for example, apply with or without modifications any enactment which applies in relation to appeals under section 82 of the Nationality, Immigration and Asylum Act 2002 or section 2 of the Special Immigration Appeals Commission Act 1997.
- (6) For the purposes of subsection (2), a “healthcare right of entry” is a right to enter the United Kingdom that a person has by virtue of—
  - (a) Article 32(1)(b) of the withdrawal agreement,
  - (b) Article 31(1)(b) of the EEA EFTA separation agreement, or
  - (c) Article 26a(1)(b) of the Swiss citizens' rights agreement.
- (7) For the purposes of subsection (2)(f) and (g), a person is a “relevant person” if—
  - (a) Article 20 of the withdrawal agreement, Article 19 of the EEA EFTA separation agreement or (as the case may be) Articles 17 or 20(3) of the Swiss citizens' rights agreement (restrictions of the rights of entry and residence) applies to the person, or
  - (b) the person is not within paragraph (a) but—
    - (i) has entry clearance granted by virtue of relevant entry clearance immigration rules,
    - (ii) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, or
    - (iii) otherwise has leave to enter granted after arriving with entry clearance granted by virtue of relevant entry clearance immigration rules.

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- (8) In subsection (7)(b), references to a person who has entry clearance or leave to enter or remain include references to a person who would have had entry clearance or leave to enter or remain but for—
- (a) the making of a deportation order under section 5(1) of the Immigration Act 1971, or
  - (b) the making of any other decision made in connection with restricting the right of the person to enter the United Kingdom.

**Changes to legislation:**

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