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STATUTORY INSTRUMENTS

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**2006 No. 1003**

**The Immigration (European Economic Area) Regulations 2006**

**PART 1**

**INTERPRETATION ETC**

**Citation and commencement**

1. These Regulations may be cited as the Immigration (European Economic Area) Regulations 2006 and shall come into force on 30<sup>th</sup> April 2006.

**General interpretation**

2.—(1) In these Regulations—

“the 1971 Act” means the Immigration Act 1971(1);

“the 1999 Act” means the Immigration and Asylum Act 1999(2);

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

“civil partner”(3) does not include a party to a civil partnership of convenience;

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

“document certifying permanent residence” means a document issued to an EEA national, in accordance with regulation 18, as proof of the holder’s permanent right of residence under regulation 15 as at the date of issue;

“EEA decision” means a decision under these Regulations that concerns a person’s—

- (a) entitlement to be admitted to the United Kingdom;
- (b) entitlement to be issued with or have renewed, or not to have revoked, a registration certificate, residence card, document certifying permanent residence or permanent residence card; or
- (c) removal from the United Kingdom;

“EEA family permit” means a document issued to a person, in accordance with regulation 12, in connection with his admission to the United Kingdom;

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

“EEA State” means—

- (a) a member State, other than the United Kingdom;
- (b) Norway, Iceland or Liechtenstein; or

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(1) 1971 c. 77.

(2) 1999 c. 33.

(3) Civil partner has the meaning given by Schedule 1 to the Interpretation Act 1978 (c. 30) as amended by paragraph 59 of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

(c) Switzerland;

“entry clearance” has the meaning given in section 33(1) of the 1971 Act<sup>(4)</sup>;

“entry clearance officer” means a person responsible for the grant or refusal of entry clearance;

“immigration rules” has the meaning given in section 33(1) of the 1971 Act;

“military service” means service in the armed forces of an EEA State;

“permanent residence card” means a card issued to a person who is not an EEA national, in accordance with regulation 18, as proof of the holder’s permanent right of residence under regulation 15 as at the date of issue;

“registration certificate” means a certificate issued to an EEA national, in accordance with regulation 16, as proof of the holder’s right of residence in the United Kingdom as at the date of issue;

“relevant EEA national” in relation to an extended family member has the meaning given in regulation 8(6);

“residence card” means a card issued to a person who is not an EEA national, in accordance with regulation 17, as proof of the holder’s right of residence in the United Kingdom as at the date of issue;

“spouse” does not include a party to a marriage of convenience;

“United Kingdom national” means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties.

(2) Paragraph (1) is subject to paragraph 1(a) of Schedule 4 (transitional provisions).

### **Continuity of residence**

**3.—**(1) This regulation applies for the purpose of calculating periods of continuous residence in the United Kingdom under regulation 5(1) and regulation 15.

(2) Continuity of residence is not affected by —

- (a) periods of absence from the United Kingdom which do not exceed six months in total in any year;
- (b) periods of absence from the United Kingdom on military service; or
- (c) any one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

(3) But continuity of residence is broken if a person is removed from the United Kingdom under regulation 19(3).

### **“Worker”, “self-employed person”, “self-sufficient person” and “student”**

**4.—**(1) In these Regulations —

- (a) “worker” means a worker within the meaning of Article 39 of the Treaty establishing the European Community<sup>(5)</sup>;
- (b) “self-employed person” means a person who establishes himself in order to pursue activity as a self-employed person in accordance with Article 43 of the Treaty establishing the European Community;
- (c) “self-sufficient person” means a person who has—

<sup>(4)</sup> Section 33(1) is amended by paragraph 5 of the Schedule to the Immigration Act 1988 (c. 14).

<sup>(5)</sup> OJ No. C325, 24.12.02, p. 51.

- (i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence; and
  - (ii) comprehensive sickness insurance cover in the United Kingdom;
- (d) “student” means a person who—
- (i) is enrolled at a private or public establishment, included on the Department for Education and Skills' Register of Education and Training Providers<sup>(6)</sup> or financed from public funds, for the principal purpose of following a course of study, including vocational training;
  - (ii) has comprehensive sickness insurance cover in the United Kingdom; and
  - (iii) assures the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence.
- (2) For the purposes of paragraph (1)(c), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person—
- (a) the requirement for that person to have sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden;
  - (b) the requirement for that person to have comprehensive sickness insurance cover in the United Kingdom shall only be satisfied if he and his family members have such cover.
- (3) For the purposes of paragraph (1)(d), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person, the requirement for that person to assure the Secretary of State that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if he assures the Secretary of State that his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden.
- (4) For the purposes of paragraphs (1)(c) and (d) and paragraphs (2) and (3), the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if they exceed the maximum level of resources which a United Kingdom national and his family members may possess if he is to become eligible for social assistance under the United Kingdom benefit system.

**“Worker or self-employed person who has ceased activity”**

5.—(1) In these Regulations, “worker or self-employed person who has ceased activity” means an EEA national who satisfies the conditions in paragraph (2), (3), (4) or (5).

- (2) A person satisfies the conditions in this paragraph if he—
- (a) terminates his activity as a worker or self-employed person and—
    - (i) has reached the age at which he is entitled to a state pension on the date on which he terminates his activity; or
    - (ii) in the case of a worker, ceases working to take early retirement;
  - (b) pursued his activity as a worker or self-employed person in the United Kingdom for at least twelve months prior to the termination; and

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<sup>(6)</sup> The Register of Education and Training Providers is maintained by, and is available on the website of, the Department for Education and Skills.

- (c) resided in the United Kingdom continuously for more than three years prior to the termination.
- (3) A person satisfies the conditions in this paragraph if—
- (a) he terminates his activity in the United Kingdom as a worker or self-employed person as a result of a permanent incapacity to work; and
- (b) either—
- (i) he resided in the United Kingdom continuously for more than two years prior to the termination; or
- (ii) the incapacity is the result of an accident at work or an occupational disease that entitles him to a pension payable in full or in part by an institution in the United Kingdom.
- (4) A person satisfies the conditions in this paragraph if—
- (a) he is active as a worker or self-employed person in an EEA State but retains his place of residence in the United Kingdom, to which he returns as a rule at least once a week; and
- (b) prior to becoming so active in that EEA State, he had been continuously resident and continuously active as a worker or self-employed person in the United Kingdom for at least three years.
- (5) A person who satisfies the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) shall, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the United Kingdom during any period in which he is working or self-employed in the EEA State.
- (6) The conditions in paragraphs (2) and (3) as to length of residence and activity as a worker or self-employed person shall not apply in relation to a person whose spouse or civil partner is a United Kingdom national.
- (7) For the purposes of this regulation—
- (a) periods of inactivity for reasons not of the person's own making;
- (b) periods of inactivity due to illness or accident; and
- (c) in the case of a worker, periods of involuntary unemployment duly recorded by the relevant employment office,
- shall be treated as periods of activity as a worker or self-employed person, as the case may be.

### **“Qualified person”**

**6.—(1)** In these Regulations, “qualified person” means a person who is an EEA national and in the United Kingdom as—

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student.
- (2) A person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—
- (a) he is temporarily unable to work as the result of an illness or accident;
- (b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom, provided that he has registered as a jobseeker with the relevant employment office and—

- (i) he was employed for one year or more before becoming unemployed;
- (ii) he has been unemployed for no more than six months; or
- (iii) he can provide evidence that he is seeking employment in the United Kingdom and has a genuine chance of being engaged;
- (c) he is involuntarily unemployed and has embarked on vocational training; or
- (d) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.

(3) A person who is no longer in self-employment shall not cease to be treated as a self-employed person for the purpose of paragraph (1)(c) if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident.

(4) For the purpose of paragraph (1)(a), “jobseeker” means a person who enters the United Kingdom in order to seek employment and can provide evidence that he is seeking employment and has a genuine chance of being engaged.

### **Family member**

7.—(1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person—

- (a) his spouse or his civil partner;
- (b) direct descendants of his, his spouse or his civil partner who are—
  - (i) under 21; or
  - (ii) dependants of his, his spouse or his civil partner;
- (c) dependent direct relatives in his ascending line or that of his spouse or his civil partner;
- (d) a person who is to be treated as the family member of that other person under paragraph (3).

(2) A person shall not be treated under paragraph (1)(b) or (c) as the family member of a student residing in the United Kingdom after the period of three months beginning on the date on which the student is admitted to the United Kingdom unless—

- (a) in the case of paragraph (b), the person is the dependent child of the student or of his spouse or civil partner; or
- (b) the student also falls within one of the other categories of qualified persons mentioned in regulation 6(1).

(3) Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.

(4) Where the relevant EEA national is a student, the extended family member shall only be treated as the family member of that national under paragraph (3) if either the EEA family permit was issued under regulation 12(2), the registration certificate was issued under regulation 16(5) or the residence card was issued under regulation 17(4).

### **“Extended family member”**

8.—(1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and—

- (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
- (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
- (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.

(3) A person satisfies the condition in this paragraph if the person is a relative of an EEA national or his spouse or his civil partner and, on serious health grounds, strictly requires the personal care of the EEA national his spouse or his civil partner.

(4) A person satisfies the condition in this paragraph if the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national were the EEA national a person present and settled in the United Kingdom.

(5) A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national.

(6) In these Regulations “relevant EEA national” means, in relation to an extended family member, the EEA national who is or whose spouse or civil partner is the relative of the extended family member for the purpose of paragraph (2), (3) or (4) or the EEA national who is the partner of the extended family member for the purpose of paragraph (5).

### **Family members of United Kingdom nationals**

**9.—**(1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member of a United Kingdom national as if the United Kingdom national were an EEA national.

(2) The conditions are that—

- (a) the United Kingdom national is residing in an EEA State as a worker or self-employed person or was so residing before returning to the United Kingdom; and
- (b) if the family member of the United Kingdom national is his spouse or civil partner, the parties are living together in the EEA State or had entered into the marriage or civil partnership and were living together in that State before the United Kingdom national returned to the United Kingdom.

(3) Where these Regulations apply to the family member of a United Kingdom national the United Kingdom national shall be treated as holding a valid passport issued by an EEA State for the purpose of the application of regulation 13 to that family member.

### **“Family member who has retained the right of residence”**

**10.—**(1) In these Regulations, “family member who has retained the right of residence” means, subject to paragraph (8), a person who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the conditions in this paragraph if—

- (a) he was a family member of a qualified person when the qualified person died;
- (b) he resided in the United Kingdom in accordance with these Regulations for at least the year immediately before the death of the qualified person; and

- (c) he satisfies the condition in paragraph (6).
- (3) A person satisfies the conditions in this paragraph if—
  - (a) he is the direct descendant of—
    - (i) a qualified person who has died;
    - (ii) a person who ceased to be a qualified person on ceasing to reside in the United Kingdom; or
    - (iii) the person who was the spouse or civil partner of the qualified person mentioned in sub-paragraph (i) when he died or is the spouse or civil partner of the person mentioned in sub-paragraph (ii); and
  - (b) he was attending an educational course in the United Kingdom immediately before the qualified person died or ceased to be a qualified person and continues to attend such a course.
- (4) A person satisfies the conditions in this paragraph if the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).
- (5) A person satisfies the conditions in this paragraph if—
  - (a) he ceased to be a family member of a qualified person on the termination of the marriage or civil partnership of the qualified person;
  - (b) he was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
  - (c) he satisfies the condition in paragraph (6); and
  - (d) either—
    - (i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;
    - (ii) the former spouse or civil partner of the qualified person has custody of a child of the qualified person;
    - (iii) the former spouse or civil partner of the qualified person has the right of access to a child of the qualified person under the age of 18 and a court has ordered that such access must take place in the United Kingdom; or
    - (iv) the continued right of residence in the United Kingdom of the person is warranted by particularly difficult circumstances, such as he or another family member having been a victim of domestic violence while the marriage or civil partnership was subsisting.
- (6) The condition in this paragraph is that the person—
  - (a) is not an EEA national but would, if he were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or
  - (b) is the family member of a person who falls within paragraph (a).
- (7) In this regulation, “educational course” means a course within the scope of Article 12 of Council Regulation (EEC) No. 1612/68 on freedom of movement for workers<sup>(7)</sup>.
- (8) A person with a permanent right of residence under regulation 15 shall not become a family member who has retained the right of residence on the death or departure from the United Kingdom of the qualified person or the termination of the marriage or civil partnership, as the case may be, and

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<sup>(7)</sup> OJ No. L 257, 19.10.68, p. 2 (OJ/SE 1<sup>st</sup> series 1968, vol II, p. 475).

a family member who has retained the right of residence shall cease to have that status on acquiring a permanent right of residence under regulation 15.