
STATUTORY INSTRUMENTS

2016 No. 1052

The Immigration (European Economic Area) Regulations 2016

PART 1

PRELIMINARY

“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 paragraphs (8) and (9), a person who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person—

- (a) was a family member of a qualified person or of an EEA national with a right of permanent residence when the qualified person or the EEA national with the right of permanent residence died;
- (b) resided in the United Kingdom in accordance with these Regulations for at least the year immediately before the death of the qualified person or the EEA national with a right of permanent residence; and
- (c) satisfies the condition in paragraph (6).

(3) The condition in this paragraph is that the person—

- (a) is the direct descendant of—
 - (i) a qualified person or an EEA national with a right of permanent residence who has died;
 - (ii) a person who ceased to be a qualified person on ceasing to reside in the United Kingdom;
 - (iii) the spouse or civil partner of the qualified person or EEA national described in sub-paragraph (i) immediately preceding that qualified person or EEA national’s death; or
 - (iv) the spouse or civil partner of the person described in sub-paragraph (ii); and
- (b) was attending an educational course in the United Kingdom immediately before the qualified person or the EEA national with a right of permanent residence died, or ceased to be a qualified person, and continues to attend such a course.

(4) The condition in this paragraph is that the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).

(5) The condition in this paragraph is that the person (“A”)—

- (a) ceased to be a family member of a qualified person or an EEA national with a right of permanent residence on the termination of the marriage or civil partnership of A;
- (b) was residing in the United Kingdom in accordance with these Regulations at the date of the termination;
- (c) 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 or the EEA national with a right of permanent residence has custody of a child of that qualified person or EEA national;
 - (iii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has the right of access to a child of that qualified person or EEA national, where the child is under the age of 18 and where 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 A is warranted by particularly difficult circumstances, such as where A or another family member has been a victim of domestic violence whilst 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 the person 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 10 of Council Regulation (EU) No. 492/2011(1).

(8) A person (“P”) does not satisfy a condition in paragraph (2), (3), (4) or (5) if, at the first time P would otherwise have satisfied the relevant condition, P had a right of permanent residence under regulation 15.

(9) A family member who has retained the right of residence ceases to enjoy that status on acquiring a right of permanent residence under regulation 15.

(1) OJ No L 141, 27.5.2011, p3.