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STATUTORY INSTRUMENTS

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**1994 No. 1895**

**IMMIGRATION**

**The Immigration (European Economic Area) Order 1994**

*Made* - - - - - *19th July 1994*

*Coming into force* - - - - - *20th July 1994*

At the Court at Buckingham Palace, the 19th day of July 1994

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Title and commencement**

1. This Order may be cited as the Immigration (European Economic Area) Order 1994 and shall come into force on the day after the day on which it is made.

**Interpretation**

2.—(1) In this Order—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

“EEA national” means a national of a State which is a Contracting Party to the European Economic Area Agreement other than the United Kingdom, but until the EEA Agreement comes into force in relation to Liechtenstein does not include a national of the State of Liechtenstein;

“EEA family permit” means an entry clearance issued, free of charge, to a family member who wishes to instal himself in the United Kingdom with a qualified person;

“economic activity” means activity as a worker, self-employed person or provider or recipient of services;

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(1) 1972 c. 68. Section 2 now has effect subject to the European Economic Area Act 1993 (c. 51).

“family member” in relation to an EEA national means—

- (a) that national’s spouse;
- (b) a descendant of that national or his spouse who is under 21 years of age or is their dependant; and
- (c) a dependent relative in the ascending line of the EEA national or his spouse;

“EEA State” means a State which is a Contracting Party to the European Economic Area Agreement, but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein;

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

“residence permit” and “residence document” means a permit or document issued by the Secretary of State as proof of the holder’s right of residence in the United Kingdom;

“the 1971 Act” means the Immigration Act 1971(2);

“visa national” means a national or citizen of one of the countries or territorial entities for the time being specified in the rules made under section 3 of the 1971 Act about visa requirements for the United Kingdom.

(2) In paragraph (1) “spouse” does not include a party to a marriage of convenience.

(3) In this Order unless the context otherwise requires a reference to an article or Schedule is a reference to an article of, or Schedule to, this Order; and within an article a reference to a paragraph is to a paragraph of that article.

### **Right of admission to United Kingdom of EEA nationals and family members**

3.—(1) Subject to article 15(1), an EEA national shall be admitted to the United Kingdom if he produces, on arrival, a valid national identity card or passport issued by another EEA State.

(2) Subject to article 15(1) and paragraph (3), a family member of an EEA national shall be admitted to the United Kingdom if he produces, on arrival, a valid national identity card issued by an EEA State or a valid passport and, if required, proof that he is such a family member.

(3) A family member who is not an EEA national must also hold, if he is a visa national or a person who seeks to be admitted to instal himself with an EEA national, an EEA family permit.

### **Right of Residence**

4.—(1) A qualified person shall be entitled to reside in the United Kingdom, without the requirement for leave to remain under the 1971 Act, for as long as he remains a qualified person.

(2) A family member of a qualified person shall be entitled to reside in the United Kingdom, without the requirement for such leave, for as long as he remains the family member of a qualified person.

(3) A qualified person and the family member of such a person may reside and pursue economic activity in the United Kingdom notwithstanding that his application for a residence permit or residence document (as the case may be) has not been determined by the Secretary of State.

### **Grant of Residence Permits**

5.—(1) Subject to articles 10 and 16(1), the Secretary of State shall grant a residence permit to a qualified person on application and production of—

- (a) a valid identity card or passport issued by an EEA State; and

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(2) 1971 c. 77.

- (b) proof that he is a qualified person.
- (2) Subject to article 16(1), the Secretary of State shall grant a residence permit or residence document to a family member of a qualified person on application and production of—
  - (a) a valid identity card issued by an EEA State or a valid passport;
  - (b) in the case of a family member who is not an EEA national and who required an EEA family permit for admission to the United Kingdom, such a permit; and
  - (c) in the case of a person not falling within paragraph (b), proof that he is a family member of a qualified person.
- (3) In the case of a worker the proof referred to in paragraph (1) may only be confirmation of the worker’s engagement from his employer or a certificate of employment.

### **Qualified Person**

- 6.—(1) In this Order “qualified person” means an EEA national who undertakes in the United Kingdom the activities of—
- (a) a worker;
  - (b) a self-employed person;
  - (c) a provider of services;
  - (d) a recipient of services;
  - (e) a self-employed person who has ceased economic activity in the United Kingdom;
  - (f) a self-sufficient person;
  - (g) a retired person; or
  - (h) a student.
- (2) For the purposes of paragraph (1)—
- (a) “a worker” means a worker within the meaning of Article 48 of the EC Treaty;
  - (b) “a self-employed person” includes a person who seeks to pursue activity as a self-employed person;
  - (c) “a provider of services” means a person who provides, or seeks to provide, services within the meaning of Article 60 of the EC Treaty;
  - (d) “a recipient of services” means a person who receives, or seeks to receive, services within the meaning of Article 60 of the EEC Treaty;
  - (e) “a self-employed person who has ceased economic activity in the United Kingdom” means—
    - (i) a person who—
      - (aa) on terminating his economic activity in a self-employed capacity has reached the age at which he is entitled to a state pension,
      - (bb) has pursued an activity in a self-employed capacity in the United Kingdom for at least twelve months prior to the termination of that activity, and
      - (cc) has resided in the United Kingdom for more than three years; or
    - (ii) a person who—
      - (aa) has resided in the United Kingdom for more than two years, and
      - (bb) has terminated his activity in a self-employed capacity as a result of a permanent incapacity to work; or
    - (iii) a person who—

- (aa) has been continuously resident and continuously active in a self-employed capacity in the United Kingdom for three years, and
  - (bb) is active in a self-employed capacity in the territory of another EEA State but who resides in the United Kingdom and returns to his residence at least once a week;
- (f) “a self sufficient person” means a person who—
- (i) does not enjoy a right of residence under any provision of Community law other than Council Directive 90/364 EEC,
  - (ii) has sufficient resources to avoid his becoming a burden on the social assistance system of the United Kingdom, and
  - (iii) is covered by sickness insurance in respect of all risks in the United Kingdom;
- (g) “a retired person” means a person who—
- (i) has pursued an activity as an employed or self-employed person, and
  - (ii) is in receipt of—
    - (aa) an invalidity or early retirement pension,
    - (bb) old age benefits,
    - (cc) survivor’s benefits, or
    - (dd) a pension in respect of an industrial accident or disease,which is sufficient to avoid his becoming a burden on the social security system of the United Kingdom, and
  - (iii) is covered by sickness insurance in respect of all risks in the United Kingdom;
- (h) “a student” means a person who—
- (i) is enrolled at a recognised educational establishment in the United Kingdom for the principal purpose of following a vocational training course,
  - (ii) has sufficient resources to avoid his becoming a burden on the social assistance system of the United Kingdom, and
  - (iii) is covered by sickness insurance in respect of all risks in the United Kingdom.
- (3) For the purposes of paragraph 2(e)—
- (a) periods of absence from the United Kingdom which do not exceed three months in any year or periods of absence from the United Kingdom on military service shall not be taken into account; and
  - (b) periods of inactivity caused by circumstances outside the control of the self-employed person and periods of inactivity caused by illness or accident shall be treated as periods of activity in a self-employed capacity.
- (4) For the purposes of paragraphs 2(f) and (g), resources or income shall be regarded as sufficient if they exceed the level in respect of which the recipient would qualify for social assistance.

## **Unemployment**

- 7.—(1) A worker does not cease to be a qualified person on the ground of unemployment if—
- (a) he is temporarily incapable of work as a result of illness or accident, or
  - (b) he is involuntarily unemployed and that fact is duly recorded by the relevant employment office.

(2) A self-employed person does not cease to be a qualified person if he is temporarily incapable of work as a result of illness or accident.

#### **Family members of self-employed persons who have ceased economic activity**

**8.** A family member of a person referred to in article 6(1)(e) is a qualified person notwithstanding the death of that person if—

- (a) the family member resided with him before his death, or
- (b) where death took place before retirement, the self-employed person had resided continuously in the United Kingdom for at least two years or the death was the result of an accident at work or an occupational disease.

#### **Family members of students**

**9.** For the purposes of this Order, only the spouse and dependent children of a student are his family members.

#### **No requirement to grant residence permit**

**10.** The Secretary of State shall not be required to grant a residence permit to a person other than a qualified person nor to—

- (a) a worker whose employment in the United Kingdom is limited to three months and who, unless he is a worker to whom Council Directive 68/360 EEC applies, holds a document from his employer certifying that his employment is so limited;
- (b) a worker who is employed in the United Kingdom but who resides in the territory of another EEA State and who returns to his residence at least once a week;
- (c) a seasonal worker whose contract of employment has been approved by the Department of Employment; nor
- (d) a provider or recipient of services if the services are to be provided for no more than three months.

#### **Form of residence permit and residence document**

**11.—(1)** The residence permit granted to a worker or a worker's family member who is an EEA national shall be in the form set out in Council Directive 68/360 EEC.

(2) A residence document issued to a family member who is not an EEA national may take the form of a stamp in that person's passport.

#### **Residence permits**

**12.—(1)** Subject to the following paragraphs, a residence permit shall be valid for at least five years.

(2) In the case of a worker who is to be employed in the United Kingdom for less than twelve but more than three months, the validity of the residence permit may be limited to the duration of the employment.

(3) In the case of a seasonal worker who is to be employed for more than three months the validity of the residence permit may be limited to the duration of the employment if the duration is indicated in the document confirming the worker's engagement or in a certificate of employment.

(4) In the case of a provider or recipient of services the validity of the residence permit may be limited to the period during which the services are to be provided.

(5) In the case of a student the residence permit shall be valid for a period which does not exceed the duration of the course of study; but where the course lasts for more than one year the validity of the residence permit may be limited to one year.

(6) In the case of a retired person or a self-sufficient person the validity of the residence permit may be limited to an initial period of two years, which may be extended for a further three years.

(7) The validity of a residence permit shall not be affected by absence from the United Kingdom for no more than six consecutive months or absence from the United Kingdom on military service.

### **Renewal of residence permit**

**13.**—(1) Subject to paragraphs (2) and (3) and article 16(1), a residence permit shall be renewed on application.

(2) On the occasion of the first renewal of a worker's residence permit the validity may be limited to one year if the worker has been involuntarily unemployed in the United Kingdom for more than one year.

(3) In the case of a student whose residence permit is limited to one year by virtue of article 12(5), renewal may be for periods limited to one year.

### **Duration and renewal of residence permit or residence document granted to family members**

**14.** The family member of an EEA national shall be entitled to a residence permit or residence document of the same duration as the residence permit granted to the qualified person of whose family he is a member; and the family member's residence permit or residence document shall be subject to the same terms as to renewal.

### **Exclusion and removal from the United Kingdom**

**15.**—(1) A person shall not be entitled to be admitted to the United Kingdom by virtue of article 3 if his exclusion is justified on grounds of public policy, public security or public health; and, subject to article 20(2), such a person may appeal against the refusal of admission as if he were a person refused leave to enter and entitled to appeal by virtue of section 13(1) of the 1971 Act, but he may not appeal so long as he is in the United Kingdom.

(2) An EEA national and the family member of such a person may be removed from the United Kingdom—

(a) on his ceasing to be a qualified person or the family member of such a person (as the case may be); or

(b) if his removal is justified on the grounds of public policy, public security or public health, but he may appeal against the decision to remove him—

(i) if he is a person to whom paragraph (a) applies, as if he were a person in respect of whom the Secretary of State had decided to make a deportation order and were entitled to appeal by virtue of section 15(1)(a) of the 1971 Act; or

(ii) if he is a person to whom paragraph (b) applies as if he were entitled to appeal as aforesaid but subject to article 20(2) and section 15(7) of the 1971 Act.

### **Refusal to grant, and revocation of, residence permit or residence document**

**16.**—(1) The Secretary of State may refuse to grant a residence permit or residence document to a qualified person or the family member of such a person (as the case may be) if the refusal is justified on grounds of public policy, public security or public health.

(2) The Secretary of State may withdraw the residence permit or residence document granted to an EEA national or the family member of such a person (as the case may be) if—

- (a) the revocation is justified on grounds of public policy, public security or public health; or
- (b) the person to whom the residence permit or residence document was issued has ceased to be a qualified person or the family member of a qualified person (as the case may be).

### **Public policy, public security and public health**

17. Decisions taken on the grounds of public policy, public security or public health (the relevant grounds) shall be taken in accordance with the following principles—

- (a) the relevant grounds shall not be invoked to secure economic ends;
- (b) a decision taken on one or more of the relevant grounds shall be based exclusively on the personal conduct of the individual in respect of whom the decision is taken;
- (c) a person's previous criminal convictions shall not, in themselves, justify a decision on grounds of public policy or public security;
- (d) a decision to refuse admission to the United Kingdom or to refuse to grant the first residence permit to a person on the grounds that he has a disease or disability shall be justified only if the disease or disability is of a type specified in Council Directive 64/221 EEC.
- (e) a disease or disability contracted after a person has been granted a first residence permit shall not justify a decision to refuse to renew his residence permit or a decision to remove him.
- (f) a person shall be informed of the grounds of public policy, public security or public health upon which the decision taken in his case is based unless it would be contrary to the interests of national security to do so.

### **Appeals**

18. Subject to article 20(2), an EEA national or the family member of such a person—

- (a) who is refused a residence permit or residence document, or
- (b) whose residence permit or residence document is withdrawn,

may appeal against the refusal and section 14(1) of the 1971 Act shall apply to him as if he were a person who has a limited leave to enter or remain in the United Kingdom and appeals against a refusal to vary that leave.

### **Immigration (Carriers' Liability) Act 1987**

19. The Immigration (Carriers' Liability) Act 1987(3) shall have effect in relation to a visa national required under this Order to hold an EEA family permit as it applies to a person required to hold a visa under the 1971 Act.

### **Application of the 1971 Act**

20.—(1) An EEA national who is in the United Kingdom and the family member of such a person shall be treated as if he were a person who required leave to enter or remain in the United Kingdom under the 1971 Act on his ceasing to be a qualified person or the family member of a qualified person (as the case may be).

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(3) 1987 (c. 24).

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(2) The following provisions of the 1971 Act shall have effect in relation to a person to whom the Order applies as they have effect in relation to a person who requires leave to enter or remain in the United Kingdom under that Act—

- (a) section 5 (procedure for deportation);
- (b) section 13(5) (exclusion conducive to the public good);
- (c) section 14(3) (departure conducive to the public good);
- (d) section 15(3) (deportation conducive to the public good);
- (e) Schedule 2 (examination).

### **Asylum and Immigration Appeals Act 1993**

**21.** Section 8 of the Asylum and Immigration Appeals Act 1993<sup>(4)</sup> (appeals to special adjudicator) shall have effect in relation to a person to whom this Order applies as it has effect in relation to a person who requires leave to enter or remain in the United Kingdom.

*N. H. Nicholls*  
Clerk of the Privy Council

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(4) 1993 c. 23.



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## EXPLANATORY NOTE

*(This note is not part of the Order)*

On 20th July 1994 section 7(1) of the Immigration Act 1988 comes into force. It provides that a person does not require leave to enter or remain in the United Kingdom in any case in which he is entitled to do so by virtue of an enforceable Community right or any provision made under section 2(2) of the European Communities Act 1972, which is amended by the European Economic Area Act 1993.

This Order makes provision for such persons by implementing the relevant Community obligations which are set out below. These obligations apply to nationals of States which are parties to the European Economic Area Agreement which came into force on 1st January 1994. Those states are the 12 European Community Member States together with Austria, Finland, Iceland, Norway and Sweden. Liechtenstein is also a party to the Agreement but it is not yet in force in relation to that State.

The Order provides that an EEA national and the family member of such a person may enter the United Kingdom on production of a valid EEA identity card or passport. Family members who are not EEA nationals and who are seeking to instal themselves in the United Kingdom require an EEA family permit. Family members who are visa nationals also require such a permit. Those EEA nationals exercising Community rights and their family members are entitled to reside in the United Kingdom and, subject to certain exceptions, to be issued with a residence permit or residence document.

The Order also provides for EEA nationals and family members to be excluded and removed from the United Kingdom on public policy grounds. Those who cease to exercise Community rights may be removed. There are rights of appeal against removal and exclusion exercisable under the relevant provisions of the Immigration Act 1971.

This Order implements the following EC Council Directives which have effect in relation to nationals of States which are parties to the European Economic Area Agreement:

- (a) Council Directive [64/221/EEC](#);
- (b) Council Directive [68/360/EEC](#);
- (c) Council Directive [72/194/EEC](#);
- (d) Council Directive [73/148/EEC](#);
- (e) Council Directive [75/34/EEC](#);
- (f) Council Directive [75/35/EEC](#);
- (g) Council Directive [90/364/EEC](#);
- (h) Council Directive [90/365/EEC](#); and
- (i) Council Directive [93/96/EEC](#).