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STATUTORY INSTRUMENTS

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**2000 No. 2326**

**The Immigration (European Economic Area) Regulations 2000**

**Part I**

**Interpretation Etc.**

**Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Immigration (European Economic Area) Regulations 2000 and shall come into force on 2nd October 2000.

(2) Subject to paragraph (3), the Immigration (European Economic Area) Order 1994(1) is hereby revoked.

(3) Article 19 of the Order continues to have effect until the commencement of the repeal by the 1999 Act of the Immigration (Carriers' Liability) Act 1987(2).

*Interpretation of Regulations*

**General**

2.—(1) In these Regulations—

“the 1971 Act” means the Immigration Act 1971(3);

“the 1999 Act” means the Immigration and Asylum Act 1999;

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

“EEA family permit” means a document issued to a person, in accordance with regulation 10 or 13, in connection with his admission to the United Kingdom;

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

“EEA State” means a State, other than the United Kingdom, which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(4) as adjusted by the Protocol signed at Brussels on 17th March 1993(5);

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

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

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

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(1) S.I.1994/1895, amended by S.I. 1997/2981.

(2) 1987 c. 24, amended by S.I. 1991/1497, article 2, and by section 12 of the Asylum and Immigration Appeals Act 1993. See the 1999 Act, Schedule 16 (repeals).

(3) 1971 c. 77.

(4) OJ No. L 1, 3.1.94, p.3.

(5) OJ No. L 1, 3.1.94, p.571.

“Regulation 1251/70” means Commission Regulation (EEC) No. 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that State(6);

“residence document” means a document issued to a person who is not an EEA national, in accordance with regulation 10 or 15, as proof of the holder’s right of residence in the United Kingdom;

“residence permit” means a permit issued to an EEA national, in accordance with regulation 10 or 15, as proof of the holder’s right of residence in the United Kingdom;

“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;

“visa national” means a person who requires a visa for the United Kingdom because he is a national or citizen of one of the countries or territorial entities for the time being specified in the immigration rules(7).

(2) In these Regulations unless the context otherwise requires a reference to a regulation is a reference to a regulation of these Regulations; and within a regulation a reference to a paragraph is to a paragraph of that regulation.

**“Worker”, “self-employed person”, “provider” and “recipient” of services, “self-sufficient person”, “retired person” and “student”**

3.—(1) In these Regulations—

- (a) “worker” means a worker within the meaning of Article 39 of the EC Treaty;
- (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 EC Treaty, or who seeks to do so;
- (c) “provider of services” means a person who provides, or seeks to provide, services within the meaning of Article 50 of the EC Treaty;
- (d) “recipient of services” means a person who receives, or seeks to receive, services within the meaning of Article 50 of the EC Treaty;
- (e) “self-sufficient person” means a person who—
  - (i) has sufficient resources to avoid his becoming a burden on the social assistance system of the United Kingdom; and
  - (ii) is covered by sickness insurance in respect of all risks in the United Kingdom;
- (f) “retired person” means a person who—
  - (i) has pursued an activity as an employed or self-employed person;
  - (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;

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(6) OJ No. L 142, 30.6.70, p.24 (OJ/SE 1st Series 1970 vol. II, p.402).

(7) See Appendix 1 to the Statement of Changes in Immigration Rules (HC 395) laid before Parliament on 23 May 1994; the Appendix was substituted from 4 April 1996 (HC 329) and renamed Appendix 1 with effect from 11 May 1998 (Cmnd 3953), and paragraph 2(b) was substituted from 1 November 1996 (HC 31).

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;

(g) “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) assures the Secretary of State by means of a declaration, or by such alternative means as he may choose that are at least equivalent, that he has sufficient resources to avoid him 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.

(2) For the purposes of paragraph (1)(e) and (f), resources or income are to be regarded as sufficient if they exceed the level in respect of which the recipient would qualify for social assistance.

#### **“Self-employed person who has ceased activity”**

4.—(1) In these Regulations, “self-employed person who has ceased activity” means—

(a) a person who—

(i) on the day on which he terminates his activity as a self-employed person has reached the age at which he is entitled to a state pension;

(ii) has pursued such activity in the United Kingdom for at least the twelve months prior to its termination; and

(iii) has resided continuously in the United Kingdom for more than three years;

(b) a person who—

(i) has resident continuously in the United Kingdom for more than two years; and

(ii) has terminated his activity as a self-employed person as a result of a permanent incapacity to work;

(c) a person who—

(i) has resided and pursued activity as a self-employed person in the United Kingdom;

(ii) has terminated that activity as a result of a permanent incapacity to work; and

(iii) such incapacity is the result of an accident at work or an occupational illness which entitles him to a pension payable in whole or in part by the state;

(d) a person who—

(i) has been continuously resident and continuously active as a self-employed person in the United Kingdom for three years; and

(ii) is active as a self-employed person in the territory of an EEA State but resides in the United Kingdom and returns to his residence at least once a week.

(2) But, if the person is the spouse of a United Kingdom national—

(a) the conditions as to length of residence and activity in paragraph (1)(a) do not apply; and

(b) the condition as to length of residence in paragraph (1)(b) does not apply.

(3) For the purposes of paragraph (1)(a) and (b) periods of activity completed in an EEA State by a person to whom paragraph (1)(d)(ii) applies are to be considered as having been completed in the United Kingdom.

(4) For the purposes of paragraph (1)—

- (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 are not to 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 are to be treated as periods of activity as a self-employed person.

**“Qualified person”**

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

- (a) a worker;
- (b) a self-employed person;
- (c) a provider of services;
- (d) a recipient of services;
- (e) a self-sufficient person;
- (f) a retired person;
- (g) a student; or
- (h) a self-employed person who has ceased activity;

or who is a person to whom paragraph (4) applies.

(2) A worker does not cease to be a qualified person solely because—

- (a) he is temporarily incapable of work as a result of illness or accident; or
- (b) he is involuntarily unemployed, if that fact is duly recorded by the relevant employment office.

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

(4) This paragraph applies to—

- (a) the family member of a qualified person referred to in paragraph (1)(h), if—
  - (i) the qualified person has died; and
  - (ii) the family member was residing with him in the United Kingdom immediately before his death;
- (b) the family member of a qualified person referred to in paragraph 1(b) where—
  - (i) the qualified person has died;
  - (ii) the family member resided with him immediately before his death; and
  - (iii) either—
    - (aa) the qualified person had resided continuously in the United Kingdom for at least the two years immediately before his death; or
    - (bb) the death was the result of an accident at work or an occupational disease; or
    - (cc) his surviving spouse is a United Kingdom national.

(5) For the purposes of paragraph (4)(b), 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 are not to be taken into account.

### **“Family member”**

6.—(1) In these Regulations, paragraphs (2) to (4) apply in order to determine the persons who are family members of another person.

- (2) If the other person is a student, the persons are—
  - (a) his spouse; and
  - (b) his dependent children.
- (3) If he is a self-sufficient or retired person, the persons are—
  - (a) his spouse;
  - (b) descendants of his or of his spouse who are under 21 or are their dependants; and
  - (c) dependent relatives in his ascending line or that of his spouse.
- (4) In any other case, the persons are—
  - (a) his spouse;
  - (b) descendants of his or of his spouse who are under 21 or are their dependants;
  - (c) dependent relatives in his ascending line or that of his spouse.

### *Interpretation of other legislation*

### **Carriers' liability**

7. For the purposes of satisfying a requirement to produce a visa under section 40(1)(b) of the 1999 Act (charges to carriers in respect of passengers without proper documents), a “valid visa of the required kind” includes a family permit or residence document required for admission as a visa national under regulation 12.

### **Persons not subject to restriction on the period for which they may remain**

8.—(1) For the purposes of the 1971 Act<sup>(8)</sup> and the British Nationality Act 1981<sup>(9)</sup>, the following are to be regarded as persons who are in the United Kingdom without being subject under the immigration laws to any restriction on the period for which they may remain—

- (a) a self-employed person who has ceased activity;
- (b) the family member of such a person who was residing with that person in the United Kingdom immediately before that person ceased his activity in the United Kingdom;
- (c) a family member to whom regulation 5(4) applies;
- (d) a person who has rights under Regulation 1251/70;
- (e) a person who has been granted permission to remain in the United Kingdom indefinitely.

(2) However, a qualified person or family member who is not mentioned in paragraph (1) is not, by virtue of his status as a qualified person or the family member of a qualified person, to be so regarded for those purposes.

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<sup>(8)</sup> See in particular section 33(2A) of the 1971 Act (definition of “settled in the United Kingdom”), inserted by section 39(6) of, and paragraph 7 of Schedule 4 to, the British Nationality Act 1981 (c. 61).

<sup>(9)</sup> 1981 c. 61; see in particular section 50(2) (definition of “settled in the United Kingdom”).