

Draft Order laid before Parliament under sections 3A(13) and 3B(6) of the Immigration Act 1971, section 34(3) of the Channel Tunnel Act 1987, sections 126(8)(b) and 141(5) of the Nationality, Immigration and Asylum Act 2002 and section 74(2)(b) of the Immigration Act 2014 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

IMMIGRATION

The Immigration (European Economic Area Nationals) (EU Exit) Order 2019

Made - - - - - ***

Coming into force in accordance with article 1(2) and (3)

The Secretary of State, in exercise of the powers conferred by sections 3A(1), (2), (7) and (10) and 3B(1), (2) and (3) of the Immigration Act 1971(**a**), sections 11(1)(a) and (e) and 34(4) of the Channel Tunnel Act 1987(**b**), sections 126(1) and 141(1), (2) and (4)(b) of the Nationality, Immigration and Asylum Act 2002(**c**) and section 38(1) and (3)(e) of the Immigration Act 2014(**d**) makes the following Order.

In accordance with sections 3A(13) and 3B(6) of the Immigration Act 1971, section 34(3) of the Channel Tunnel Act 1987, sections 126(8)(b) and 141(5) of the Nationality, Immigration and Asylum Act 2002 and section 74(2)(b) of the Immigration Act 2014, a draft of this Order was laid before and approved by a resolution of each House of Parliament.

In accordance with section 141(5)(b) of the Nationality, Immigration and Asylum Act 2002, the Secretary of State has considered whether there is anyone with whom it would be appropriate to consult and has concluded that there is not.

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- (a) 1971 c. 77. Sections 3A and 3B were inserted by sections 1 and 2 of the Immigration and Asylum Act 1999 (c. 33) respectively.
 - (b) 1987 c. 53. Section 13 provides that the power in section 11 may be exercised by the Minister in charge of the Government department concerned with the matter in respect of which provision is being made.
 - (c) 2002 c. 41. Section 126 was amended by sections 8 and 14(3) of, paragraph 3 of Schedule 2 to and paragraph 19 of Schedule 9 to the Immigration Act 2014 (c. 22). Subsections (3) to (7) and (8A) of section 126 make further provision about the powers in subsection (1). See subsection (2) for the definition of “immigration application” and subsection (9) for the definitions of “authorised person”, “biometric information” and “document”.
 - (d) 2014 c. 22.

PART 1

Introduction

Citation and commencement

1.—(1) This Order may be cited as the Immigration (European Economic Area Nationals) (EU Exit) Order 2019.

(2) Chapter 1 of Part 2 of this Order comes into force when the Immigration (European Economic Area) Regulations 2016^(a) are revoked.

(3) The remaining provisions of this Order come into force on the later of 30th March 2019 or the day after the day on which they are made.

PART 2

Leave to enter or remain

Chapter 1

Grant of leave to EEA and Swiss nationals

Interpretation

2. In this Chapter—

“the 1971 Act” means the Immigration Act 1971;

“control zone” means that part of the territory of another state in which immigration officers are empowered to exercise immigration controls by virtue of one or more of the International Treaties;

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

“immigration officer” has the same meaning as in the Immigration Acts^(b);

“International Treaties” means the following—

- (a) the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link, which was signed at Canterbury on 12th February 1986 and entered into force on 29th July 1987, together with its supplementary protocols and arrangements^(c);
- (b) the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic Concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link which was signed on 25th November 1991 and entered into force on 2nd August 1993^(d);
- (c) the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the Kingdom of Belgium and the Government of the French Republic concerning Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link, which was signed at Brussels on 15th December 1993 and entered into force on 1st December 1997, together with its Protocol^(e);
- (d) the Additional Protocol to the Sangatte protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French

(a) S.I. 2016/1052.

(b) See section 61 of the UK Borders Act 2007 (c. 30).

(c) Cm 1827.

(d) Cm 2366.

(e) Cm 3954.

Republic on the establishment of bureaux responsible for controls on persons travelling by train between the United Kingdom and France, which was signed at Brussels on 29th May 2000 and entered into force on 25th May 2001(a);

- (e) the Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning the Implementation of Frontier Controls at the Sea Ports of Both Countries on the Channel and North Sea, which was signed at Le Touquet on 2nd February 2003 and entered into force on 1st February 2004(b);
- (f) the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Belgium, concerning Immigration Controls on Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link which was signed at London on 3rd December 2018 and at Brussels on 18th December 2013 and entered into force on 1st October 2016(c).

Grant of leave to EEA and Swiss nationals

3.—(1) A person to whom this article applies has leave to enter the United Kingdom.

(2) This article applies to a person who—

- (a) is an EEA national or a national of Switzerland;
- (b) requires leave to enter the United Kingdom or would require leave to enter if that person were not arriving on a local journey from within the common travel area;
- (c) is travelling on a valid national identity card or a valid passport issued by an EEA state or Switzerland;
- (d) does not otherwise have leave to enter the United Kingdom;
- (e) does not have an entry clearance complying with the requirements of article 3 of the Immigration (Leave to Enter and Remain) Order 2000 (requirements)(d);
- (f) is not a person to whom article 4 of this Order applies;
- (g) either—
 - (i) arrives at a port in the United Kingdom and presents the document mentioned in sub-paragraph (c) to an immigration officer or an automated gate;
 - (ii) enters a control zone and presents the document mentioned in sub-paragraph (c) to an immigration officer or an automated gate;
 - (iii) arrives in the United Kingdom on a local journey from the Republic of Ireland, or
 - (iv) otherwise arrives in the United Kingdom and either presents the document mentioned in sub-paragraph (c) to an immigration officer or disembarks in accordance with arrangements approved by an immigration officer pursuant to paragraph 27(1)(a) of Schedule 2 to the 1971 Act(e), and
- (h) does not apply for leave to enter the United Kingdom as a visitor or a short-term student within the meaning of the immigration rules(f).

Persons who may not obtain leave under article 3

4.—(1) This article applies to a person described in any of paragraphs (2) to (7).

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- (a) Cm 5586.
 - (b) Cm 5832.
 - (c) Cm 8807.
 - (d) S.I. 2000/1161. Article 3 was amended by S.I. 2004/475.
 - (e) Paragraph 27 was amended by section 31(2) of the Immigration, Asylum and Nationality Act 2006 (c.13) and paragraph 1(2) of Schedule 5(1) to the Counter-Terrorism and Security Act 2015 (c. 6).
 - (f) Laid before Parliament on 23rd May 1994 (HC 395), as amended.

(2) This paragraph applies to person who is subject to a deportation order made under section 5 of the 1971 Act (procedure for, and further provisions as to, deportation)(a) or a decision to make a deportation order under that section.

(3) This paragraph applies to a person who is an excluded person for the purposes of section 8B of the 1971 Act (persons excluded from the United Kingdom under certain instruments)(b).

(4) This paragraph applies to a person who is subject to an exclusion order made under regulation 23(5) of the Immigration (European Economic Area) Regulations 2016 (exclusion and removal from the United Kingdom).

(5) This paragraph applies to a person who is subject to a removal decision made under regulation 23(6) of the Immigration (European Economic Area) Regulations 2016.

(6) This paragraph applies to a person in respect of whom directions have been given by the Secretary of State for that person not to be given entry to the United Kingdom on the ground that the person's exclusion is conducive to the public good.

(7) This paragraph applies to a person in respect of whom a removal direction has been given under section 10(7) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom)(c).

Nature of leave granted by virtue of article 3

5. A person who has leave to enter by virtue of article 3 is to be treated for the purposes of the Immigration Acts and the immigration rules—

- (a) as if that person had been given the leave by notice in accordance with section 4 of the 1971 Act (administration of control)(d), and
- (b) as if the leave had been given before that person's arrival in the United Kingdom or entry into the control zone.

Duration and condition of leave

6. Leave by virtue of article 3 is given for a period of three months.

Chapter 2

Appendix EU to the immigration rules

Grant of leave by virtue of Appendix EU to the immigration rules

7. The Secretary of State may give or refuse leave to enter the United Kingdom to any person who seeks leave to enter the United Kingdom by virtue of Appendix EU to the immigration rules(e).

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- (a) Section 5 was amended by sections 39(6) and 52(7) of and paragraph 2 of Schedule 4 and Schedule 8 to, the British Nationality Act 1981 (c. 61), section 10 of, and paragraph 2 of Schedule 1 to, the Immigration Act 1988 (c. 14) and paragraph 2 of Schedule 2 to the Asylum and Immigration Act 1996 (c. 49). Section 8B was inserted by section 8 of the Immigration and Asylum Act 1999 (c. 33). It was amended by section 76(4), (5), (7), (8) and (9) of the Immigration Act 2016 (c. 19) and paragraph 1(2), (3), (4) and (5) of Schedule 3(1) to the Sanctions and Anti-Money Laundering Act 2018 (c. 13).
 - (b) Section 8B was inserted by section 8 of the Immigration and Asylum Act 1999 (c. 33). It was amended by section 76(4), (5), (7), (8) and (9) of the Immigration Act 2016 (c.19) and paragraph 1(2), (3), (4) and (5) of Schedule 3(1) to the Sanctions and Anti-Money Laundering Act 2018 (c. 13).
 - (c) 1999 c. 33. Section 10 was amended by section 1 of the Immigration Act 2014 (c. 22)
 - (d) Section 4 was amended by section 39(6) of, and paragraph 2 of Schedule 4 to, the British Nationality Act 1981 (c. 61), paragraph 45 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), section 62(2) of the Immigration Act 2016 (c. 19) and S.I. 1993/1813.
 - (e) Appendix EU was laid before Parliament on 20th July 2018 (CM 9675).

Amendments to the Immigration (Leave to Enter and Remain) Order 2000

- 8.—(1) The Immigration (Leave to Enter and Remain) Order 2000(a) is amended as follows.
- (2) In article 1(3) (interpretation) at the appropriate places insert the following definitions—
- ““Crown service” means service of the Crown, whether within Her Majesty’s dominions or elsewhere, under Her Majesty’s government in the United Kingdom or in a Northern Ireland department or under the Scottish Administration or under the Welsh Government;”;
- ““Her Majesty’s Forces” has the same meaning as in the Armed Forces Act 2006(b);”.
- (3) In article 13(4) (lapsing of leave)—
- (a) before sub-paragraph (a), insert—
- “(za) where the holder has unlimited leave granted by virtue of Appendix EU to the immigration rules (including unlimited leave granted by virtue of Appendix EU before this paragraph comes into force), subject to article 13C, the unlimited leave lapses if the holder stays outside the United Kingdom and Islands for a continuous period of more than—
- (i) four years, in the case of unlimited leave granted by virtue of Appendix EU to the immigration rules as a Swiss national or a family member of a Swiss national;
- (ii) five years, in all other cases;”;
- (b) in sub-paragraph (a), for “subject to articles 13A and 13B”, substitute “in any other case and subject to articles 13A, 13B and 13C”;
- (c) in both places, after “United Kingdom” insert “and Islands”.
- (4) In article 13A (partners and children of members of HM Forces)—
- (a) in paragraph (1), after “United Kingdom” insert “and Islands”;
- (b) omit paragraph (4).
- (5) In article 13B (partners and children of certain Crown servants etc)—
- (a) in the heading, omit “certain”;
- (b) in paragraph (1)(b), after “indefinite leave” insert “, other than unlimited leave granted by virtue of Appendix EU to the immigration rules”;
- (c) in paragraph (2)(a), after “United Kingdom” insert “and Islands”;
- (d) in paragraph (3), for sub-paragraph (b) substitute—
- “(b) employment on Crown service.”.
- (6) After article 13B, insert—
- “13C Crown servants etc with leave granted by virtue of Appendix EU to the immigration rules**
- (1) Any period of time spent outside the United Kingdom and Islands by a person to whom this article applies does not count towards the period mentioned in article 13(4)(za) or 13(4)(a).
- (2) This article applies to a person who has leave granted by virtue of Appendix EU to the immigration rules and who is—
- (a) a member of Her Majesty’s Forces posted outside the United Kingdom and Islands;

(a) S.I. 2000/1161, as amended by S.I. 1993/1813, 2003/2818, 2004/475, 2005/1159, 2010/957, 2013/1749, 2015/434, and 2016/1132.

(b) 2006 c. 52.

- (b) a national of a member State, Iceland, Liechtenstein, Norway or Switzerland posted outside the United Kingdom and Islands in employment—
 - (i) on Crown service, or
 - (ii) in the British Council as a permanent member of that Council;
- (c) accompanying a person who is posted outside the United Kingdom and Islands—
 - (i) in employment on Crown service,
 - (ii) in employment in the British Council as a permanent member of that Council, or
 - (iii) as a member of Her Majesty’s Forces.”.

PART 3

Biometrics

Amendments to the Immigration (Provision of Physical Data) Regulations 2006

9. In regulation 2 of the Immigration (Provision of Physical Data) Regulations 2006 (interpretation)(a), in the definition of “application”, for paragraph (e) substitute—

- “(e) an application for leave to enter or remain in the United Kingdom made under Appendix EU to the immigration rules.”.

PART 4

Immigration Health Charge

Amendments to the Immigration (Health Charge) Order 2015

10. In Schedule 2 (exemptions) to the Immigration (Health Charge) Order 2015(b), in paragraph 1, after sub-paragraph (l) insert—

- “(m)for entry clearance under any immigration rules which are identified in the immigration rules as having effect in connection with the granting of entry clearance for the purposes of acquiring leave to enter or remain in the United Kingdom by virtue of Appendix EU to the immigration rules;
- (n) for leave to remain by virtue of Appendix EU to the immigration rules.”.

Signatory text

Address
Date

Name
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in connection with nationals of the European Economic Area and Swiss nationals, together with their family members, following the withdrawal of the United Kingdom from the European Union.

(a) S.I. 2006/1743; amended by S.I. 2011/1779, 2015/737 and 2018/928.
(b) S.I. 2015/792; amended by S.I. 2016/400, 2017/420 and 2018/1389.

Chapter 1 of Part 2 enables an EEA national or national of Switzerland who meets the conditions set out in article 3 to obtain leave to enter the United Kingdom. These conditions enable an individual who has appropriate documentation and is not excluded under article 4 to obtain leave by going through an eGate, passing through a manned control point, contacting an immigration officer (where for example they arrived by a general aviation or general maritime route) or arriving on a local journey from Ireland. Where the conditions in article 3 are met such a person will automatically be given leave to enter for three months. Where such leave is given, no notice of leave is given to the person. A person given leave under article 3 may be examined by an immigration officer in the usual way to see whether there are grounds for cancelling leave.

Article 7 provides that the Secretary of State may grant or refuse leave to enter to a person outside the United Kingdom who seeks leave to enter the United Kingdom by virtue of Appendix EU to the immigration rules.

Article 8 amends the Immigration (Leave to Enter and Remain) Order 2000 (S.I. 2000/1161) (the “2000 Order”) to provide that where a person granted indefinite leave to enter or remain under Appendix EU to the immigration rules leaves the United Kingdom, their leave does not lapse by a continuous period of absence from the United Kingdom of up to five years (four years in the case of a person granted leave as a Swiss national or their family member). Article 8 amends the 2000 Order to clarify that it is only absences from the United Kingdom, the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man that cause indefinite or limited leave to enter or remain to lapse (in certain circumstances). Article 8 also amends the circumstances under the 2000 Order in which indefinite or limited leave to enter or remain does not lapse where the person is on Crown service overseas or is a member of HM Forces serving overseas, or is accompanying such a person, in particular to include where this leave has been granted under Appendix EU to the immigration rules.

Article 9 amends the Immigration (Provision of Physical Data) Regulations 2006 (S.I. 2006/1743) to allow for the requiring of applicants for leave to enter the United Kingdom under Appendix EU to the immigration rules to provide a record of their fingerprints and a photograph of their face (referred to as “biometric information”).

Article 10 of this Order amends the Immigration (Health Charge) Order 2015 (S.I. 2015/792), which requires a person who applies for entry clearance for a limited period, or for limited leave to remain in the United Kingdom, to pay an immigration health charge. Schedule 2 to the 2015 Order exempts particular categories of application from the requirement to pay the charge. Article 10 of this Order amends Schedule 2 to the 2015 Order to exempt applications made for leave to enter or remain in the United Kingdom, or for entry clearance, by virtue of Appendix EU to the immigration rules.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen

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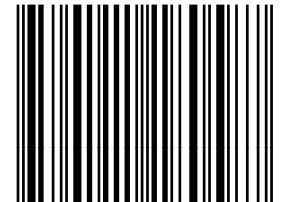
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