Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2022 No.

EXITING THE EUROPEAN UNION

The Cessation of EU Law Relating to Prohibitions on Grounds of Nationality and Free Movement of Persons Regulations 2022

Made - - - -	***
Coming into force	***

The Secretary of State, in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**) makes the following Regulations.

In accordance with paragraph 1(3) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Cessation of EU Law Relating to Prohibitions on Grounds of Nationality and Free Movement of Persons Regulations 2022.

(2) These Regulations come into force on the day after the day on which they are made.

(3) In these Regulations, "relevant matters" are the matters set out in the Schedule.

(4) Nothing in these Regulations is to be construed as implying in any respect the continued application, recognition or availability in domestic law of—

(a) the prohibitions referred to in regulation 2;

(b) the rights, powers, liabilities, obligations, restrictions, remedies and procedures referred to in regulation 3; or

(c) Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5th April 2011 on freedom of movement for workers within the Union.

Cessation of prohibitions on grounds of nationality

2. The prohibitions on the grounds of nationality which—

(a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and

(b) are derived from—

(i) Article 18 of the Treaty on the Functioning of the European Union;

(**a**) 2018 c. 16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Paragraph 21 of Schedule 7 was amended by paragraph 53 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020.

(ii) Article 4 of the EEA Agreement; and

(iii) Article 2 of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons signed at Brussels on 21st June 1999(**a**),

so far as they relate to relevant matters, cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

Cessation of free movement of persons

3. Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—

(a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and

(b) are derived (directly or indirectly) from—

(i) Article 21 or 45 of the Treaty on the Functioning of the European Union;

(ii) Article 28 or 29 of the EEA Agreement; or

(iii) Articles 3(6), 9(2), (3) and (6), and 15 of Annex 1 to the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons signed at Brussels on 21st June 1999,

so far as they relate to relevant matters, cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

Amendment of Regulation (EU) No 492/2011

4.—(1) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5th April 2011 on freedom of movement for workers within the Union(**b**) is amended as follows.

(2) In Article 7—

(a) after paragraph 2, insert—

"2A. Paragraphs 1 and 2 do not apply in relation to the matters set out in the Schedule to the Cessation of EU Law Relating to Prohibitions on Grounds of Nationality and Free Movement of Persons Regulations 2022 (relevant matters).";

(b) omit paragraph 3.

(3) Omit Articles 9 and 10.

Signed by authority of the Secretary of State for Work and Pensions

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

Date

SCHEDULE

Regulation 1(3)

Relevant Matters

Social security and statutory payments

1.—(1) Social security, including—

(a) any scheme providing financial assistance to or in respect of individuals, in particular providing such assistance to or in respect of individuals—

(**a**) The Agreement was specified as an EU Treaty by S.I. 2000/3269.
(**b**) EUR 2011/492; amended by paragraph 4 of Schedule 1 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20).

(i) who qualify by reason of old age, survivorship, bereavement, disability, sickness, incapacity, injury, unemployment, maternity, paternity, the care they provide to other individuals or having responsibility for other individuals;

(ii) who qualify by reason of low income; or

(iii) in relation to their housing costs; and

(b) tax credits under Part 1 of the Tax Credits Act 2002(**a**).

(2) The following payments under the following Parts of the Social Security Contributions and Benefits Act 1992(**b**)—

(a) statutory adoption pay under Part 12ZB(**c**);

(b) statutory maternity pay under Part 12(**d**);

(c) statutory parental bereavement pay under Part 12ZD(**e**);

(d) statutory paternity pay under Part 12ZA(**f**);

(e) statutory shared parental pay under Part 12ZC(**g**); and

(f) statutory sick pay under Part 11(**h**).

(3) Sub-paragraph (2) is without prejudice to sub-paragraph (1).

Social assistance

2.—(1) Social assistance, within the meaning of Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States(**i**) ("the Directive").

(2) The reference in subparagraph (1) to the Directive includes a reference to the case law of the Court of Justice of the European Union which interprets the concept of social assistance.

Housing

3.—(1) Housing, including—

(a) any accommodation provided to homeless persons; and

(b) mobile homes.

(2) "Mobile home" means a caravan, motor vehicle, boat or other movable structure designed or adapted for human habitation, but does not include—

(a) any railway rolling stock which is for the time being on rails forming part of a railway system; or

(b) any tent.

(**a**) 2002 c. 21; Part 1 was repealed, subject to savings, by paragraph 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5).

(**b**) 1992 c. 4.

(**c**) Part 12ZB was inserted by section 4 of the Employment Act 2002 (c. 22) and amended by section 121 of the Children and Families Act 2014 (c. 6), and S.I. 2006/2012, 2011/1740, 2016/413 and 2019/1514. There are other amendments not relevant to these Regulations. Part 12ZB is modified by S.I. 2003/499 and S.I. 2014/1413 in relation to certain cases.

(**d**) Part 12 was amended by paragraph 12 of Schedule 1 to the Social Security (Transfer of Functions, etc.) Act 1999 (c. 2), paragraph 1 of Schedule 8 to the Employment Act 2002 and S.I. 1994/1230. There are other amendments not relevant to these Regulations.

(**e**) Part 12ZD was inserted by paragraph 5 of Schedule 1 to the Parental Bereavement (Leave and Pay) Act 2018 (c. 24).

(**f**) Part 12ZA was inserted by section 2 of the Employment Act 2002 and amended by paragraphs 11, 12 and 13 of Schedule 7 to the Children and Families Act 2014, and S.I. 2016/413. There are other amendments not relevant to these Regulations. Part 12ZA is modified by S.I. 2003/499 and S.I. 2014/1413 in relation to certain cases.

(**g**) Part 12ZC was inserted by section 119(1) of the Children and Families Act 2014 and amended by S.I. 2016/413. There are other amendments not relevant to these Regulations. Part 12ZC is modified by S.I. 2014/1413 in relation to certain cases.

(**h**) Part 11 was amended by paragraph 34 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18), paragraph 9 of Schedule 1 to the Social Security (Transfer of Functions, etc.) Act 1999 and section 41 of the Coronavirus Act 2020 (c. 7).

(**i**) O.J. L. 158, 30.4.2004, p.77.

Education, training and apprenticeships

4. Education, training and apprenticeships, including—

(a) social and physical training (including the promotion of the development of young children);

(b) vocational training (including that which helps people prepare for, obtain and retain employment);

(c) the charging of fees in connection with education and training; and

(d) the provision of financial assistance or financial resources in connection with education, training or apprenticeships.

Childcare, employer-supported childcare and the childcare payment scheme, etc.

5.—(1) Childcare, including—

(a) the provision of childcare free of charge; and

(b) the provision of financial assistance or financial resources in connection with the provision of childcare, including—

(i) childcare vouchers, within the meaning given in section 84 of the Income Tax (Earnings and Pensions) Act 2003(**a**) ("the 2003 Act"), or a scheme to which section 270A of that Act applies;

(ii) a scheme to which section 318 of the 2003 Act(**b**) applies (employer-provided childcare);

(iii) a scheme to which section 318A of the 2003 Act applies (employer-contracted childcare)(**c**);

(iv) a scheme under section 1 of the Childcare Payments Act 2014(**d**) (childcare payment scheme).

(2) "Childcare", for the purposes of this paragraph, means any form of care for a child but does not include—

(a) any form of health care for a child;

(b) care provided for a child if the care—

(i) is provided in any of the following establishments as part of the establishment's activities—

(aa) a children's home;

(bb) a care home;

(cc) a hospital in which the child is a patient;

(dd) a residential family centre; and

(ii) is so provided by the person carrying on the establishment or a person employed by the establishment (including a person who is employed under a contract of services); or

(c) care provided for a child who is detained in—

(**a**) 2003 c. 1; section 84 was amended by paragraph 2 of Schedule 13 to the Finance Act 2004 (c. 12). Section 270A was inserted by paragraph 3 of Schedule 13 to that Act and amended by sections 15, 16 of the Finance Act 2005 (c. 7), section 36 of, and paragraph 2 of Schedule 8 to, the Finance Act 2011 (c. 11), section 63 of the Childcare Payments Act 2014 (c. 28) and S.I. 2013/513.

(**b**) Section 318 was substituted by paragraph 1 of Schedule 13 to the Finance Act 2004 and amended by section 16 of the Finance Act 2005 and S.I 2008/2170, 2009/1544, 2011/775 and 2011/2581. Schemes to which this section applies are known as "workplace nurseries".

(**c**) Section 318A was inserted by paragraph 1 of Schedule 13 to the Finance Act 2004 and amended by section 16 of the Finance Act 2005, section 36 of, and paragraph 4 of Schedule 8 to, the Finance Act 2011, section 64 of the Childcare Payments Act 2014, paragraph 55 of Schedule 2 to the Finance Act 2017 (c. 10) and S.I. 2013/513. Schemes to which this section applies are known as "directly contracted childcare".

(**d**) 2014 c. 28. The scheme under section 1 is known as "the childcare payment scheme".

(i) a young offender institution;

(ii) a secure training college; or

(iii) a secure college.

(3) In this paragraph—

"care home", "children's home" and "residential family centre" have the same meaning as in the Care Standards Act 2000(**a**);

"child" means a person under the age of 18, except for the purposes of sub-paragraph (1)(b)(i) to (iv);

"hospital" has the meaning given by section 275 of the National Health Service Act 2006(**b**).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) (in particular under section 8(2)(a) and (d)) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations, at regulations 2 and 3, provide for the cessation of certain redundant EU rights and prohibitions in relation to the relevant matters set out in the Schedule. Regulation 4 amends Regulation (EU) No 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union for the same purpose.

No impact assessment has been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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(**a**) 2000 c. 14.
(**b**) 2006 c. 41; amendments have been made to section 275, but those amendments are not relevant to this instrument.

£4.90

http://www.legislation.gov.uk/id/ukdsi/2022/9780348239942

ISBN 978-0-34-823994-2

