



# EUROPEAN UNION AND TRADE ACT 2019 (DEFICIENCIES) (IMMIGRATION) REGULATIONS 2019

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Statutory Document No. 2019/0331



*European Union and Trade Act 2019*

# **EUROPEAN UNION AND TRADE ACT 2019 (DEFICIENCIES) (IMMIGRATION) REGULATIONS 2019**

*Approved by Tynwald: 17 October 2019  
Coming into Operation in accordance with regulation 2*

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The Council of Ministers makes the following Regulations under section 12(1) of, and paragraph 1 of Schedule 4 to, the European Union and Trade Act 2019.

## **1 Title**

These Regulations are the European Union and Trade Act 2019 (Deficiencies) (Immigration) Regulations 2019.

## **2 Commencement**

If approved by Tynwald, these Regulations come into operation on exit day.

## **3 Interpretation**

In these Regulations “exit day” has the same meaning as in the European Union and Trade Act 2019<sup>1</sup>.

## **PART 1**

### **AMENDMENT OF SUBORDINATE LEGISLATION**

## **4 Amendment of the Immigration (Control of Entry through Republic of Ireland) Order 2016**

- (1) The Immigration (Control of Entry through Republic of Ireland) Order 2016<sup>2</sup> is amended as follows.
- (2) In article 6 (Restrictions and Conditions)—

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<sup>1</sup> At 2 of 2019

<sup>2</sup> SD No. 49/2016

- (a) In paragraph (1) for “section 7 of the 1988 Act” substitute **63** a retained enforceable EU right or any provision made under section 2B of the European Communities (Isle of Man) Act 1973<sup>3</sup> as that provision is modified from time to time **62**;
- (b) In paragraph (9) for the words “section 7 of the 1988 Act.” substitute –
- 63**(a) a retained enforceable EU right; or
  - (b) any provision made under section 2B of the European Communities (Isle of Man) Act 1973<sup>4</sup> as that provision is modified from time to time. **62**.
- (c) Immediately after paragraph (10) insert –
- 63**(11) For the purposes of paragraphs (1) and (9) –
- “retained enforceable EU right” means a right that –
- (a) was created or arose by or under the EU Treaties before the time when this paragraph comes into force; and
  - (b) forms part of retained EU law by virtue of section 7 or 8 of the European Union and Trade Act 2019<sup>5</sup>,
- as that right is modified from time to time. **62**.

## 5 Amendment of the Immigration (Leave to Enter and Remain) Order 2019

- (1) The Immigration (Leave to Enter and Remain) Order 2019<sup>6</sup> is amended as follows. –
- (2) In article 18 (Partners and children of Crown Servants) –
- (a) In paragraph (2)(b)(iii) –
    - (i) For “an enforceable EU right” substitute **63** a retained enforceable EU right **62**;

<sup>3</sup> AT 14 of 1973

<sup>4</sup> AT 14 of 1973

<sup>5</sup> AT 2 of 2019

<sup>6</sup> SD No. 2019/0147

- (ii) after “1973” insert **“as that provision is modified from time to time”**.
- (b) After paragraph (2), insert —
  - “(2A) For the purposes of subsection (2)(b)(iii) —**  
“retained enforceable EU right” means a right that —
    - (a) was created or arose by or under the EU Treaties before the time when this paragraph comes into force; and
    - (b) forms part of retained EU law by virtue of section 7 or 8 of the European Union and Trade Act 2019<sup>7</sup>,  
  - as that right is modified from time to time. **”**.

## 6 Amendment of the Immigration (Provision of Physical Data) Regulations 2019

- (1) The Immigration (Provision of Physical Data) Regulations 2019<sup>8</sup> are amended as follows.
- (2) In regulation 3 (Interpretation) —
  - (a) In the definition of “application”, in paragraph (c) —
    - (i) For “an enforceable EU right” substitute **“a retained enforceable EU right”**;
    - (ii) After “1973 (of Tynwald)” insert **“as that provision is modified from time to time”**;
  - (b) After the definition of “Refugee Convention” insert —
    - ““retained enforceable EU right” means a right that —**
      - (a) was created or arose by or under the EU Treaties before the time when the European Union and Trade Act (Deficiencies)(Immigration) Regulations 2019<sup>9</sup> came into force, and
      - (b) forms part of retained EU law by virtue of section 7 or 8 of the European Union and Trade Act 2019<sup>10</sup>,  
    - as that right is modified from time to time. **”**.
- (3) In regulation 10 (use and retention of biometric information), in paragraph (2)(e) for the words from “an enforceable EU right” to the end, substitute —

<sup>7</sup> AT 2 of 2019

<sup>8</sup> SD No. 2019/0145

<sup>9</sup> SD No. 2019/0331

<sup>10</sup> AT 2 of 2019

- 22** —  
 (i) a retained enforceable EU right, or  
 (ii) any provision made or having effect under section 2B of the European Communities (Isle of Man) Act 1973<sup>11</sup> as that provision is modified from time to time. **22**.
- (4) In regulation 12 (retention of fingerprints) —
- (a) In paragraph (2)(f)(ii) —
- (i) for “an enforceable EU right” substitute **22**a retained enforceable EU right **22**;
- (ii) after “1973” insert **22**as that provision is modified from time to time **22**.
- (b) In paragraph (4), for Article 16 of Council Directive 2004/38/EC” substitute **22**regulation 17 of the Immigration (European Economic Area) Regulations 2019<sup>12</sup> **22**.

## 7 Amendment of the Immigration and Nationality (Fees) Order 2018

- (1) The Immigration and Nationality (Fees) Order 2018<sup>13</sup> is amended as follows.
- (2) In article 3 (Interpretation) —
- (a) In the definition of “European residence document”, for the words from “an enforceable EU right” to the end, substitute —
- 22** —  
 (a) a retained enforceable EU right; or  
 (b) any provision made under section 2B of the European Communities (Isle of Man) Act 1973<sup>14</sup> as that provision is modified from time to time; **22**;
- (b) After the definition of “premium services”, insert —
- 22** “retained enforceable EU right” means a right that —  
 (a) was created or arose by or under the EU Treaties before the time when the European Union and Trade Act 2019 (Deficiencies) (Immigration) Regulations 2019<sup>15</sup> come into force; and

<sup>11</sup> AT 14 of 1973

<sup>12</sup> SD No. 2019/0132

<sup>13</sup> SD No. 2018/0092

<sup>14</sup> AT 14 of 1973

<sup>15</sup> SD No. 2019/0331

- (b) forms part of retained EU law by virtue of section 7 or 8 of the European Union and Trade Act 2018<sup>16</sup>,  
as that right is modified from time to time;<sup>17</sup>.

## 8 Amendment of the Immigration (European Economic Area) Regulations 2019

- (1) The Immigration (European Economic Area) Regulations 2019<sup>17</sup> are amended as follows.
- (2) In regulation 3 (general interpretation) —
  - (a) In each of the definitions of “civil partnership of convenience”, “durable partnership of convenience” and “marriage of convenience” —
    - (i) for “other right” substitute **66** right **62**;
    - (ii) for “the EU Treaties” in each place it appears substitute **66** retained EU law **62**;
  - (b) in the definition of “EEA State”, in paragraph (a), omit “,other than the United Kingdom”.
- (3) In regulation 15 (initial right of residence), in paragraph (4), after “27(3) (misuse of right to reside)” insert **66**, 28A (decisions taken on conducive grounds) **62**.
- (4) In regulation 16 (extended right of residence), in paragraph (4), after 26(3)” insert **66**, 28A **62**.
- (5) In regulation 24 (exclusion and removal from the Isle of Man) —
  - (a) in paragraph (1), after “regulation 28”, insert **66** or on conducive grounds in accordance with regulation 28A **62**;
  - (b) in paragraph (5), after “regulation 28”, insert **66** or on conducive grounds in accordance with regulation 28A **62**;
  - (c) in paragraph (6)(b), after “regulation 28”, insert **66**, on conducive grounds in accordance with regulation 28A. **62**;
  - (d) in paragraph (7)(b), after “regulation 28”, insert **66**, on conducive grounds in accordance with regulation 28A. **62**
- (6) In regulation 25 (refusal to issue or renew and revocation of residence documentation) —
  - (a) in paragraph (1), after “public health” insert **66** in accordance with regulation 28, or on conducive grounds in accordance with regulation 28A **62**;

<sup>16</sup> AT 2 of 2019

<sup>17</sup> SD No. 2019/0132

- (b) in paragraph (6)(a), after “public health” insert **or** in accordance with regulation 28 or on conducive grounds in accordance with regulation 28A **or**;
- (c) omit paragraph (7).
- (7) In regulation 26 (cancellation of a right to reside), in paragraph (2)(b), after “regulation 28”, insert **or** or on conducive grounds in accordance with regulation 28A **or**.
- (8) In regulation 27 (misuse of a right to reside), in paragraph (1)(a) omit **or** (as determined by reference to Council Directive 2004/38/EC and the EU Treaties) **or**.
- (9) After regulation 28 insert —
- or 28A Decisions taken on conducive grounds**

(1) An EEA decision may be taken on the ground that the decision is conducive to the public good.

(2) But a decision may only be taken under this regulation in relation to a person as a result of conduct that took place at or after the time when this regulation comes into force. **or**.
- (10) In regulation 30 (person claiming right of admission), in paragraph (1) —
- (a) at the end of sub-paragraph (a)(iii), insert **or** or **or**;
- (b) omit “or” from the end of subparagraph (a)(iv);
- (c) omit sub-paragraph (a)(v).
- (11) In regulation 33 (person subject to removal), in paragraph (5), after “public health” insert **or** in accordance with regulation 28 or on conducive grounds under regulation 28A **or**.
- (12) In Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.), for paragraph (1) substitute —
- or**(1) The Isle of Man enjoys considerable discretion, acting within the parameters set by the law, to define its own standards of public policy and public security, for purposes tailored to its individual context from time to time. **or**.

## PART 2

### EC ASSOCIATION AGREEMENT WITH TURKEY

#### 9 Disapplication of rights etc.

- (1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which fall within paragraph (3) cease to be recognised and



available in domestic law so far as they are inconsistent with or otherwise capable of affecting a relevant decision taken in respect of a person.

- (2) A decision is relevant for the purposes of paragraph (1) if —
  - (a) it is taken by reference to any conduct of the person that takes place at or after the time when this regulation comes into force; and
  - (b) it restricts or removes the ability of the person to enter or remain in the Isle of Man.
- (3) A matter falls within this paragraph if it —
  - (a) continues to be recognised and available in domestic law by virtue of section 8 of the European Union and Trade Act 2019<sup>18</sup>; and
  - (b) derives from the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963.

### **PART 3**

#### **SUPPLEMENTARY**

#### **10 Saving and transitional provisions**

- (1) Schedule 1 (Saving and transitional provisions) has effect.

**SIGNED BY THE AUTHORITY OF THE CHIEF SECRETARY**  
**27 SEPTEMBER 2019**

**KIRSTY HEMSLEY**  
*Director of Change & Reform*

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<sup>18</sup> AT 2 of 2019



## SCHEDULE 1

### SAVING AND TRANSITIONAL PROVISIONS IN RELATION TO IMMIGRATION AND NATIONALITY

#### **1 Meaning of “commencement day”**

In this schedule “*commencement day*” means the time when these Regulations come into force.

#### **2 Nationality, Immigration and Asylum Act 2002**

- (1) The amendments made by regulation 8 do not affect —
  - (a) the power in section 109 of the Nationality, Immigration and Asylum Act 2002 (as it has effect in the Isle of Man) to make regulations which provide for, or make provision about, an appeal against an immigration decision taken before commencement day; or
  - (b) the operation of any regulations made under that section before commencement day in relation to such an appeal.
- (2) The amendment made by regulation 6 does not affect the operation of any regulations made under section 126 of the Nationality, Immigration and Asylum Act 2002 (as it has effect in the Isle of Man) before commencement day in relation to an application for a document referred to in section 126(2)(e).
- (3) In sub-paragraph (1)(a) “*immigration decision*” has the meaning given by section 109 of the Nationality, Immigration and Asylum Act 2002 as it had effect in the Isle of Man immediately before commencement day.

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations are made in the exercise of powers conferred by sections 12(1) of the European Union and Trade Act 2019 in order to address failures of retained European Union law to operate effectively and other deficiencies under section 12(2) arising from the United Kingdom's withdrawal from the European Union.

They also make saving and transitional provisions under paragraph 1 of Schedule 4 to the European Union and Trade Act 2019.

Part 1 (Amendment of subordinate legislation) makes amendments relating to immigration, amending subordinate legislation.

Part 2 (EC Association Agreement with Turkey) partially disapplies rights related to immigration derived from the EC association with Turkey that would otherwise continue to be recognised and available in domestic law by virtue of section 8 of the European Union and Trade Act 2019. The amendment provides that those rights no longer apply in relation to the imposition of restriction on residence rights (including deportation) by reference to conduct that takes place on or after the day on which these Regulations come into force.

Part 3 (supplementary) introduces Schedule 1 which makes saving and transitional provisions.