



# IMMIGRATION (EUROPEAN ECONOMIC AREA) REGULATIONS 2019

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Statutory Document No. 2019/0132



*European Communities (Isle of Man) Act 1973 (of Tynwald)*  
*Nationality, Immigration and Asylum Act 2002 (of Parliament)*

## IMMIGRATION (EUROPEAN ECONOMIC AREA) REGULATIONS 2019<sup>1</sup>

*Laid before Tynwald: 19 March 2019*  
*Coming into operation in accordance with regulation 2*

The Council of Ministers makes the following Regulations in exercise of the powers conferred by section 2B of the European Communities (Isle of Man) Act 1973 (of Tynwald).

The Governor makes the following Regulations in exercise of the powers conferred by section 109 of the Nationality, Immigration and Asylum Act 2002 (of Parliament) as it has effect in the Isle of Man.

**Editorial Note:** This instrument, made under the European Communities (Isle of Man) Act 1973, is continued by virtue of section 6 of the European Union and Trade Act 2019.

### PART 1: INTRODUCTION

#### 1 Title

These Regulations are the Immigration (European Economic Area) Regulations 2019.

#### 2 Commencement

These Regulations come into operation on the day after the commencement of the Immigration (Isle of Man)(Amendment) Order 2019.

### PART 2: INTERPRETATION

#### 3 General Interpretation

(1) In these Regulations, any reference to an Act of Parliament, or a provision of an Act of Parliament, which extends to the Isle of Man is to that Act or provision as it has effect in the Isle of Man.

- (2) Section 11 of the 1971 Act (construction of references to entry) applies for the purpose of determining whether a person has entered the Isle of Man for the purpose of these Regulations as it applies for the purpose of determining whether a person has entered the Isle of Man for the purpose of that Act.
- (3) In these Regulations—
- “**the 1971 Act**” means the Immigration Act 1971 (of Parliament)<sup>1</sup>;
- “**the 1999 Act**” means the Immigration and Asylum Act 1999 (of Parliament)<sup>2</sup>;
- “**the 2002 Act**” means the Nationality, Immigration and Asylum Act 2002 (of Parliament)<sup>3</sup>;
- “**British Islands**” means the United Kingdom, the Channel Islands and the Island;
- “**civil partner**” does not include —
- (a) a party to a civil partnership of convenience; or
  - (b) the civil partner (“C”) of a person (“P”) where a spouse, civil partner or durable partner of C or P is already present in the Isle of Man;
- “**civil partnership of convenience**” includes a civil partnership entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent —
- (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the Isle of Man); or
  - (b) any other criteria that the party to the civil partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;
- “**common travel area**” has the same meaning as provided in section 1(3) of the 1971 Act;
- “**decision maker**” means the Lieutenant Governor, an immigration officer or an entry clearance officer (as the case may be);
- “**deportation order**” means an order made under regulation 33(3);
- “**derivative right to reside**” means a right to reside under regulation 18;
- “**document certifying a derivative right of residence**” means a document issued under regulation 21;
- “**document certifying an extended right of residence**” means a document issued under regulation 19;

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<sup>1</sup> 1971 c. 77

<sup>2</sup> 1999 c. 33.

<sup>3</sup> 2002 c. 41

“**document certifying permanent residence**” means a document issued under regulation 20;

“**durable partner**” does not include —

- (a) a party to a durable partnership of convenience; or
- (b) the durable partner (“D”) of a person (“P”) where a spouse, civil partner or durable partner of D or P is already present in the Isle of Man and where that marriage, civil partnership or durable partnership is subsisting;

“**durable partnership of convenience**” includes a durable partnership entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent —

- (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the Isle of Man); or
- (b) any other criteria that the party to the durable partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

“**EEA decision**” means a decision under these Regulations that concerns —

- (a) a person’s entitlement to be admitted to the Isle of Man;
- (b) a person’s entitlement to be issued with or have renewed, or not to have revoked, a document certifying permanent residence, a document certifying a derivative right of residence or a document certifying an extended right of residence (but does not include a decision that an application for the above documentation is invalid);
- (c) a person’s removal from the Isle of Man; or
- (d) the cancellation, under regulation 26, of a person’s right to reside in the Isle of Man,

but does not include a decision to refuse to issue under regulation 14(4) (issue of an EEA family permit to an extended family member) or 19(3) (issue of a document certifying an extended right of residence to an extended family member), a decision to reject an application under regulation 27(4) (misuse of a right to reside) material change in circumstances), or any decisions under regulation or 34 (human rights considerations and interim orders to suspend removal);

“**EEA family permit**” means a document issued to a person, in accordance with regulation 14;

“**EEA national**” means —

- (a) a national of an EEA State who is not also a British citizen; or

- (b) a national of an EEA State who is also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national, in accordance with regulation 16 or 17;

save that a person does not fall within paragraph (b) if the EEA State of which they are a national became a member State after that person acquired British citizenship;

“**EEA State**” means —

- (a) a member State other than the United Kingdom; or  
(b) Liechtenstein, Iceland, Norway or Switzerland;

“**entry clearance**” has the meaning given in section 33(1) of the 1971 Act<sup>4</sup>;

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

“**exclusion order**” means an order made under regulation 24(5);

“**indefinite leave**”, “**immigration laws**” and “**immigration rules**” have the meaning given in section 33(1) of the 1971 Act;

“**marriage of convenience**” includes a marriage entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent —

- (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the Isle of Man); or  
(b) any other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

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

“**qualifying EEA State residence card**” means a valid document called a “Residence card of a family member of a Union Citizen” issued under Article 10 of Council Directive 2004/38/EC (as applied where relevant, by the EEA agreement) by any EEA State (except Switzerland) to a non-EEA family member of an EEA national as proof of the holder’s right of residence in that State;

“**relevant EEA national**” in relation to an extended family member has the meaning given in regulation 9(6);

“**right to reside**” means a right to reside in the Isle of Man under these Regulations (or where so specified, a right to reside under a particular regulation);

“**spouse**” does not include —

- (a) a party to a marriage of convenience; or

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<sup>4</sup> The relevant part of section 33(1) was amended by the British Nationality Act 1981(c. 61), Schedule 4, paragraph 2 and the Immigration Act 1988 (c. 14), the schedule, paragraph 5.

- (b) the spouse (“S”) of a person (“P”) where a spouse, civil partner or durable partner of S or P is already present in the Isle of Man.

#### **4 Continuity of residence**

- (1) This regulation applies for the purpose of calculating periods of continuous residence in the Isle of Man under these Regulations.
- (2) Continuity of residence is not affected by —
  - (a) periods of absence from the British Islands which do not exceed 6 months in total in any year;
  - (b) periods of absence from the British Islands on compulsory military service; or
  - (c) one absence from the British Islands not exceeding 12 months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.
- (3) Continuity of residence is broken when —
  - (a) a person serves a sentence of imprisonment;
  - (b) a deportation or exclusion order is made in relation to a person; or
  - (c) a person is removed from the Isle of Man under these Regulations.
- (4) Paragraph (3)(a) applies, in principle to an EEA national who has resided in the British Islands for at least 10 years, but it does not apply where the Governor considers that —
  - (a) prior to serving a sentence of imprisonment, the EEA national had forged integrating links with the Isle of Man;
  - (b) the effect of the sentence of imprisonment was not such as to break those integrating links; and
  - (c) taking into account an overall assessment of the EEA national’s situation, it would not be appropriate to apply paragraph (3)(a) to the assessment of that EEA national’s continuity of residence.

#### **5 “Worker”, “self-employed person”, “self-sufficient person” and “student”**

- (1) In these Regulations —
  - (a) “worker” means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union<sup>5</sup>;
  - (b) “self-employed person” means a person who is established in the Isle of Man in order to pursue activity as a self-employed person

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<sup>5</sup> OJ No C326, 26.10.12

in accordance with Article 49 of the Treaty on the Functioning of the European Union<sup>6</sup>;

- (c) “self-sufficient person” who has —
    - (i) sufficient resources not to become a burden on the social assistance system of the Isle of Man during the person’s period of residence; and
    - (ii) comprehensive sickness insurance cover in the Isle of Man.
  - (d) “student” means a person who —
    - (i) is enrolled, for the principal purpose of following a course of study (including vocational training), at a public or private establishment which is —
      - (aa) financed from public funds; or
      - (bb) otherwise recognised by the Governor as an establishment which has been accredited for the purpose of providing such courses within the law of the Isle of Man;
    - (ii) has comprehensive sickness insurance cover in the Isle of Man; and
    - (iii) has assured the Governor by means of a declaration, or by such equivalent means as the person may choose, that the person has sufficient resources not to become a burden on the social assistance system of the Isle of Man during the person’s intended period of residence.
- (2) For the purposes of paragraphs (3) and (4) below “relevant family member” means a family member of a self-sufficient person or student who is residing in the Isle of Man and whose right to reside is dependent upon being the family member of that student or self-sufficient person.
- (3) In sub-paragraphs (1)(c) and (d) —
- (a) the requirement for the self-sufficient person or student to have sufficient resources not to become a burden on the social assistance system of the Isle of Man during the intended period of residence is only satisfied if the resources available to the student or self-sufficient person and any of their relevant family members are sufficient to avoid the self-sufficient person or student and all their relevant family members from becoming such a burden; and
  - (b) the requirement for the student or self-sufficient person to have comprehensive sickness insurance cover in the Isle of Man is only satisfied if such cover extends to cover both the student or self-sufficient person and all their relevant family members.

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<sup>6</sup> OJ No C326, 26.10.12



- (4) In paragraph (1)(c) and (d) and paragraph (3), the resources of the student or self-sufficient person and, where applicable, any of their relevant family members, are to be regarded as sufficient if –
- (a) they exceed the maximum level of resources which a British citizen (including the resources of the British citizen’s family members) may possess if the British citizen is to become eligible for social assistance under the Isle of Man benefit system; or
  - (b) paragraph (a) does not apply, but taking into account the personal circumstances of the person concerned and, where applicable, all their relevant family members, it appears to the decision maker that the resources of the person or persons concerned should be regarded as sufficient.
- (5) For the purposes of regulation 18(2) (criteria for having a derivative right to reside), references in this regulation to “family members” includes a “primary carer” as defined in regulation 18(8).

## 6 “Worker or self-employed person who has ceased activity”

- (1) In these Regulations, “worker or self-employed person who has ceased activity” means an EEA national who satisfies a condition in paragraph (2), (3), (4) or (5).
- (2) The condition in this paragraph is that the person –
- (a) terminates activity as a worker or self-employed person and –
    - (i) had reached the age of entitlement to a state pension on terminating that activity; or
    - (ii) in the case of a worker, ceases working to take early retirement;
  - (b) pursued activity as a worker or self-employed person in the Isle of Man for at least 12 months prior to the termination; and
  - (c) resided in the British Islands continuously for more than 3 years prior to the termination.
- (3) The condition in this paragraph is that the person terminates activity in the Isle of Man as a worker or self-employed person as a result of permanent incapacity to work; and
- (a) had resided in the British Islands continuously for more than two years prior to the termination; or
  - (b) the incapacity is the result of an accident at work or an occupational disease that entitles the person to a pension payable in full or in part by an institution in the Isle of Man.
- (4) The condition in the paragraph is that the person –

- (a) is active as a worker or self-employed person in an EEA State but retains a place of residence in the Isle of Man and returns, as a rule, to that place at least once a week; and
  - (b) prior to becoming so active in the EEA State, had been continuously resident and continuously active as a worker or self-employed person in the British Islands for at least three years.
- (5) A person who satisfied the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) must, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the Isle of Man during any period during which that person is working or self-employed in the EEA State.
- (6) The conditions in paragraphs (2) and (3) as to length of residence and activity as a worker or self-employed person do not apply in relation to a person whose spouse or civil partner is a British citizen.
- (7) Subject to regulation 7(2), periods of —
- (a) inactivity for reasons not of the person's own making;
  - (b) inactivity due to illness or accident; and
  - (c) in the case of a worker, involuntary unemployment duly recorded by the Treasury,
- must be treated as periods of activity as a worker or self-employed person, as the case may be.

## 7 “Qualified person”

- (1) In these Regulations —

“**jobseeker**” means an EEA national who satisfies conditions A, B and, where relevant C;

“**qualified person**” means a person who is an EEA national and in the Isle of Man as —

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student;

“**relevant period**” means —

- (a) in the case of a person retaining worker status under paragraph (2)(b) or self-employed person status under paragraph (4)(b), a continuous period of 6 months;
- (b) in the case of a jobseeker, 91 days, minus the cumulative total of any days during which the person concerned previously enjoyed

a right to reside as a jobseeker, not including any days prior to a continuous absence from the British Islands of at least 12 months.

- (2) A person who is no longer working must continue to be treated as a worker provided that the person –
- (a) is temporarily unable to work as the result of an illness or accident;
  - (b) is in duly recorded involuntary unemployment after having been employed in the Isle of Man for at least one year, provided the person –
    - (i) has registered as a jobseeker with the Social Security division of the Treasury; and
    - (ii) satisfies conditions A and B;
  - (c) is in duly recorded involuntary unemployment after having been employed in the Isle of Man for less than one year, provided the person –
    - (i) has registered as a jobseeker with the Social Security division of the Treasury; and
    - (ii) satisfies conditions A and B;
  - (d) is involuntarily unemployed and has embarked on vocational training; or
  - (e) has voluntarily ceased working and has embarked on vocational training that is related to the person's previous employment.
- (3) A person to whom paragraph (2)(c) applies may only retain worker status for a maximum of 6 months.
- (4) A person who is no longer in self-employment must continue to be treated as a self-employed person provided that the person –
- (a) is temporarily unable to engage in activities as a self-employed person as the result of an illness or accident;
  - (b) is in duly recorded involuntary unemployment having worked as a self-employed person in the Isle of Man for at least one year provided the person –
    - (i) has registered as a jobseeker with the Social Security division of the Treasury; and
    - (ii) satisfies conditions D and E;
  - (c) is in duly recorded involuntary unemployment after having worked as a self-employed person in the Isle of Man for less than one year provided the person –
    - (i) has registered as a jobseeker with the Social Security division of the Treasury; and
    - (ii) satisfies conditions D and E;

- (d) is involuntarily no longer in self-employment and has embarked on vocational training; or
  - (e) has voluntarily ceased self-employment and has embarked on vocational training that is related to the person's previous occupation.
- (5) A person to whom paragraph (4)(c) applies may only retain self-employed status for a maximum of six months.
- (6) Condition A is that the person –
- (a) entered the Isle of Man in order to seek employment; or
  - (b) is present in the Isle of Man seeking employment, immediately after enjoying a right to reside under sub-paragraphs (b), (d) or (e) of the definition of qualified person in paragraph (1) (disregarding any period during which worker status was retained pursuant to (2)(b) or (c)).
- (7) Condition B is that the person provides evidence of seeking employment and having a genuine chance of being engaged.
- (8) A person may not retain the status of –
- (a) a worker under paragraph (2)(b);
  - (b) a jobseeker; or
  - (c) a self-employed person under paragraph (4)(b);
- for longer than the relevant period without providing compelling evidence of continuing to seek employment and having a genuine chance of being engaged.
- (9) Condition C applies where the person concerned has, previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B or, as the case may be, conditions D and E –
- (a) in the case of a person to whom paragraph (2)(b) or (c) or (4)(b) or (c) applied, for at least six months; or
  - (b) in the case of a jobseeker, for at least 91 days in total;
- unless the person concerned has, since enjoying the above right to reside, been continuously absent from the British Islands for at least 12 months.
- (10) Condition C is that the person has had a period of absence from the British Islands.
- (11) Where condition C applies –
- (a) paragraph (8) does not apply; and
  - (b) condition B or, as the case may be, condition E has effect as if “compelling” were inserted before “evidence”.
- (12) Condition D is that the person –

- (a) entered the Isle of Man as a self-employed person or in order to seek employment as a self-employed person; or
  - (b) is present in the Isle of Man seeking employment or self-employment, immediately after enjoying a right to reside under sub-paragraphs (c) to (e) of the definition of qualified person in paragraph (1) (disregarding any period during which self-employed status was retained pursuant to paragraph (4)(b) or (c)).
- (13) Condition E is that the person provides evidence of seeking employment or self-employment and having a genuine chance of being engaged.

## 8 “Family member”

- (1) In these Regulations, “family member” means, in relation to a person (“A”) —
- (a) A’s spouse or civil partner;
  - (b) A’s direct descendants, or the direct descendants of A’s spouse or civil partner;
    - (i) aged under 21; or
    - (ii) dependants of A, or of A’s spouse or civil partner;
  - (c) dependent direct relatives in A’s ascending line, or in that of A’s spouse or civil partner.
- (2) Where A is a student residing in the Isle of Man otherwise than under regulation 15 (initial right of residence), a person is not a family member of A under paragraph (1)(b) or (c) unless —
- (a) in the case of paragraph (1)(b), the person is the dependent child of A or of A’s spouse or civil partner; or
  - (b) A also falls within one of the other categories of qualified person mentioned in regulation 7(1).
- (3) A person (“B”) who is an extended family member and has been issued with an EEA family permit or a document certifying an extended right of residence must be treated as a family member of A, provided —
- (a) B continues to satisfy the conditions in regulation 9(2), (3), (4) or (5); and
  - (b) the EEA family permit or document certifying an extended right of residence remains in force.
- (4) A must be an EEA national unless regulation 10 applies (family members of British citizens).

## 9 “Extended family member”

- (1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 8(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

- (2) The condition in this paragraph is that the person is —
  - (a) a relative of an EEA national; and
  - (b) does not reside in the British Islands and is dependent upon the EEA national or is a member of the EEA national's household; and either —
    - (i) is accompanying the EEA national to the Isle of Man or wants to join the EEA national in the Isle of Man; or
    - (ii) has joined the EEA national in the Isle of Man and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.
- (3) The condition in this paragraph is that the person is a relative of an EEA national and on serious health grounds, strictly requires the personal care of the EEA nation.
- (4) The condition in this paragraph is that the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the Isle of Man as a dependent relative of the EEA national.
- (5) The condition in this paragraph is that the person is the partner (other than a civil partner) of, and in a durable relationship with, an EEA national, and is able to prove this to the decision maker.
- (6) In these Regulations, "relevant EEA national" means, in relation to an extended family member —
  - (a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related;
  - (b) referred to in paragraph (5), the EEA national who is the durable partner of the extended family member.
- (7) In paragraphs (2) and (3), "relative of an EEA national" includes a relative of the spouse or civil partner of an EEA national where on the basis of being an extended family member a person —
  - (a) has prior to the day after the commencement of the Immigration (Isle of Man)(Amendment) Order 2019 been issued with —
    - (i) an EEA family permit; or
    - (ii) a document certifying an extended right of residence; and
  - (b) has since the most recent issue of a document satisfying sub-paragraph (a) been continuously resident in the British Islands.

## 10 Family members of British citizens

- (1) If the conditions of paragraph (2) are satisfied, these Regulations apply to a person who is the family member ("F") of a British citizen ("BC") as though the BC were an EEA national.

- (2) The conditions are that —
  - (a) BC —
    - (i) is residing in an EEA State as a worker, self-employed person, self-sufficient person or a student, or so resided immediately before returning to the Isle of Man; or
    - (ii) has acquired the right of permanent residence in an EEA State;
  - (b) F and BC resided together in the EEA State;
  - (c) F and BC's residence in the EEA State was genuine;
  - (d) F was a family member of BC during all or part of their joint residence in the EEA State; and
  - (e) genuine family life was created or strengthened during their joint residence in the EEA State.
- (3) Factors relevant to whether residence in the EEA State is or was genuine include —
  - (a) whether the centre of BC's life transferred to the EEA State;
  - (b) the length of F and BC's joint residence in the EEA State;
  - (c) the nature and quality of the F and BC's accommodation in the EEA State, and whether it is or was BC's principal residence;
  - (d) the degree of F and BC's integration in the EEA State;
  - (e) whether F's first lawful residence in the EU with BC was in the EEA State.
- (4) This regulation does not apply —
  - (a) where the purpose of the residence in the EEA State was as a means for circumventing any immigration laws applying to non-EEA nationals to which F would otherwise be subject (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the Isle of Man);
  - (b) to a person who is only eligible to be treated as a family member as a result of regulation 9(3) (extended family members treated as family members).
- (5) Where these Regulations apply to F, BC is to be treated as holding a valid passport issued by an EEA State for the purposes of the application of these Regulations to F.
- (6) In paragraph (2)(a)(ii), BC is only to be treated as having acquired the right of permanent residence in the EEA State if such residence would have led to the acquisition of that right under regulation 17, had it taken place in the Isle of Man.
- (7) For the purposes of determining whether, when treating the BC as an EEA national under these Regulations in accordance with paragraph (1), BC would be a qualified person —

- (a) any requirement to have comprehensive sickness insurance cover in the Isle of Man still applies, save that it does not require the cover to extend to BC;
- (b) in assessing whether BC can continue to be treated as a worker under regulation 7(2)(b) or (c), BC is not required to satisfy condition A;
- (c) in assessing whether BC can be treated as a jobseeker as defined in regulation 7(1), BC is not required to satisfy conditions A and where it would otherwise be relevant, condition C.

## **11 Dual national: national of an EEA State who acquires British citizenship**

- (1) In this regulation “DN” means a person within paragraph (b) of the definition of “EEA national” in regulation 3(3).
- (2) DN who comes within the definition of “qualified person” in regulation 7(1) is only a qualified person for the purpose of these Regulations if DN –
  - (a) came within the definition of “qualified person” at the time of acquisition of British citizenship; and
  - (b) has not at any time subsequent to the acquisition of British citizenship lost the status of qualified person.
- (3) Regulation 17 only applies to DN, or to the family member of DN who is not an EEA national, if DN satisfies the condition in paragraph (4).
- (4) The condition in this paragraph is that at the time of acquisition of British citizenship DN either –
  - (a) was a qualified person; or
  - (b) had acquired a right of permanent residence in accordance with these Regulations.

## **12 “Family member who has retained the right of residence”**

- (1) In these Regulations, “family member who has retained the right of residence” means, subject to paragraphs (8) and (9), a person who satisfies a condition in paragraph (2), (3), (4) or (5).
- (2) The condition in this paragraph is that the person –
  - (a) was a family member of a qualified person or of an EEA national with a right of permanent residence when the qualified person or the EEA national with the right of permanent residence died;
  - (b) resided in the Isle of Man in accordance with these Regulations for at least the year immediately before the death of the qualified person or the EEA national with a right of permanent residence; and



- (c) satisfies the condition in paragraph (6).
- (3) The condition in this paragraph is that the person —
- (a) is the direct descendant of —
    - (i) a qualified person or an EEA national with a right of permanent residence who has died;
    - (ii) a person who ceased to be a qualified person on ceasing to reside in the British Islands;
    - (iii) the spouse or civil partner of the qualified person or EEA national described in sub-paragraph (i) immediately preceding that qualified person or EEA national's death; or
    - (iv) the spouse or civil partner of the person described in sub-paragraph (ii); and
  - (b) was attending an educational course in the Isle of Man immediately before the qualified person or the EEA national with a right of permanent residence died, or ceased to be a qualified person, and continues to attend such a course.
- (4) The condition in this paragraph is that the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).
- (5) The condition in this paragraph is that the person ("A") —
- (a) ceased to be a family member of a qualified person or an EEA national with a right of permanent residence on the termination of the marriage or civil partnership of A;
  - (b) was residing in the Isle of Man in accordance with these Regulations at the date of the termination;
  - (c) satisfies the condition in paragraph (6); and
  - (d) either —
    - (i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership, the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the Isle of Man for at least one year during its duration;
    - (ii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has custody of a child of that qualified person or EEA national;
    - (iii) the former spouse or civil partner of the qualified person or the EEA national with a right of permanent residence has the right of access to a child of that qualified person or EEA national, where the child is under the age of eighteen and where a court has ordered that such access must take place in the Isle of Man; or

- (iv) the continued right of residence in the Isle of Man of A is warranted by particularly difficult circumstances, such as where A or another family member has been a victim of domestic violence whilst the marriage or civil partnership was subsisting.
- (6) The condition in this paragraph is that the person —
  - (a) is not an EEA national but would, if the person were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 7; or
  - (b) is the family member of a person who falls within paragraph (a).
- (7) In this regulation, “educational course” means a course within the scope of Article 10 of Council Regulation (EU) No, 492/2011<sup>7</sup>.
- (8) A person (“P”) does not satisfy a condition in paragraph (2), (3), (4) or (5) if, at the first time P would otherwise have satisfied the relevant condition, P had a right of permanent residence under regulation 17.
- (9) A family member who has retained the right of residence ceases to enjoy that status on acquiring a right of permanent residence under regulation 17.

### PART 3: EEA RIGHTS

#### 13 Right of admission to the Isle of Man

- (1) An EEA national must be admitted to the Isle of Man on arrival if the EEA national produces a valid national identity card or passport issued by an EEA State.
- (2) A person who is not an EEA national must be admitted to the Isle of Man if that person is —
  - (a) a family member of an EEA national and produces on arrival a valid passport and qualifying EEA State residence card, provided the conditions in regulation 24(4) (family member of EEA national must accompany or join EEA national with right to reside) are met; or
  - (b) a family member of an EEA national, a family member who has retained the right of residence, a person who meets the criteria in paragraph (5) or a person with a right of permanent residence under regulation 17 and produces on arrival —
    - (i) a valid passport; and
    - (ii) a valid EEA family permit, document certifying an extended right of residence, a document certifying

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<sup>7</sup> OJ NO L 141, 27.5.2011

permanent residence or a document certifying a derivative right of residence.

- (3) An immigration officer must not place a stamp in the passport of a person admitted to the Isle of Man under this regulation who is not an EEA national if the person produces a document certifying an extended right of residence, a document certifying permanent residence, a document certifying a derivative right of residence or a qualifying EEA State residence card.
- (4) Before an immigration officer refuses admission to the Isle of Man to a person under this regulation because the person does not produce on arrival a document mentioned in paragraph (1) or (2), the immigration officer must provide every reasonable opportunity for the document to be obtained by, or brought to, the person or allow the person to prove by other means that the person is —
  - (a) an EEA national;
  - (b) a family member of an EEA national with a right to accompany that EEA national or join that EEA national in the Isle of Man;
  - (c) a person who meets the criteria in paragraph (5); or
  - (d) a family member who has retained the right of residence or a person with a right of permanent residence under regulation 17.
- (5) The criteria in this paragraph are that a person (“P”) —
  - (a) previously resided in the Isle of Man under regulation 18(3) and would be entitled to reside in the Isle of Man under that regulation were P in the Isle of Man.
  - (b) is accompanying an EEA national to, or joining an EEA national in, the Isle of Man and P would be entitled to reside in the Isle of Man under regulation 18(2) were P and the EEA national both in the Isle of Man;
  - (c) is accompanying a person (“the relevant person”) to, or joining the relevant person in, the Isle of Man and —
    - (i) the relevant person is residing, or has resided, in the Isle of Man under regulation 18(3); and
    - (ii) P would be entitled to reside in the Isle of Man under regulation 18(4) were P and the relevant person both in the Isle of Man;
  - (d) is accompanying a person who meets the criteria in subparagraph (b) or (c) (“the relevant person”) to the Isle of Man and —
    - (i) P and the relevant person are both —
      - (aa) seeking admission to the Isle of Man in reliance on this paragraph for the first time; or

- (bb) returning to the Isle of Man having previously resided there pursuant to the same provisions of regulation 19 in reliance on which they now base their claim to admission; and
    - (ii) P would be entitled to reside in the Isle of Man under regulation 18(6) were P and the relevant person there; or
  - (e) is accompanying a British citizen to, or joining a British citizen in, the Isle of Man and P would be entitled to reside in the Isle of Man under regulation 18(5) were P and the British citizen both in the Isle of Man.
- (6) Paragraph (7) applies where —
  - (a) a person (“P”) seeks admission to the Isle of Man in reliance on paragraph (5)(b), (c) or (e); and
  - (b) if P were in the Isle of Man, P would have a derived right to reside under regulation 18(8)(b)(ii).
- (7) Where this paragraph applies a person (“P”) must only be regarded as meeting the criteria in paragraph (5)(b), (c) or (e) where P —
  - (a) is accompanying the person with whom P would on admission to the Isle of Man jointly share care responsibility for the purpose of regulation 18(8)(b)(ii); or
  - (b) has previously resided in the Isle of Man pursuant to regulation 18(2), (4) or (5) as a joint primary carer and seeks admission to the Isle of Man in order to reside there again on the same basis.
- (8) But this regulation is subject to regulations 24(1), (2), (3) and (4) and 32.
- (9) A person is not entitled to be admitted by virtue of this regulation where that person is subject to a decision under regulation 24(6)(b) (removal decision).

#### **14 Issue of EEA family permit**

- (1) A decision maker must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and —
  - (a) the EEA national —
    - (i) is residing in the Isle of Man in accordance with these Regulations; or
    - (ii) will be travelling to the Isle of Man within 6 months of the date of the application and will be an EEA national residing in the Isle of Man in accordance with these Regulations on arrival in the Isle of Man; and
  - (b) the family member will be accompanying the EEA national to the Isle of Man or joining the EEA national there.

- (2) A decision maker must issue an EEA family permit to a person who applies and provides evidence demonstrating that, at the time at which the person first intends to use the EEA family permit, the person —
  - (a) would be entitled to be admitted to the Isle of Man because that person would meet the criteria in regulation 13(5); and
  - (b) will (save in the case of a person who would be entitled to be admitted to the Isle of Man because that person would meet the criteria for admission in regulation 13(5)(a)) be accompanying to, or joining in, the Isle of Man any person from whom the right to be admitted to the Isle of Man under the criteria in regulation 13(5) is derived.
- (3) A decision maker must issue an EEA family permit to —
  - (a) a family member who has retained the right of residence; or
  - (b) a person who is not an EEA national but who has acquired the right of permanent residence under regulation 17.
- (4) A decision maker may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if —
  - (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
  - (b) the extended family member wants to accompany the relevant EEA national to the Isle of Man or to join that EEA national there; and
  - (c) in all the circumstances, it appears to the decision maker appropriate to issue the EEA family permit.
- (5) Where a decision maker receives an application under paragraph (4) an extensive examination of the personal circumstances of the applicant must be undertaken by the Governor and if the application is refused, the decision maker must give reasons justifying the refusal unless this is contrary to the interests of national security.
- (6) An EEA family permit issued under this regulation must be issued free of charge and as soon as possible.
- (7) But an EEA family permit must not be issued under this regulation if the applicant or the EEA national concerned is not entitled to be admitted to the Isle of Man as a result of regulation 24(1), (2) or (3) or falls to be excluded in accordance with regulation 24(5).
- (8) An EEA family permit must not be issued under this regulation to a person (“A”) who is the spouse, civil partner or durable partner of a person (“B”) where a spouse, civil partner or durable partner of A or B holds a valid EEA family permit.

**15 Initial right of residence**

- (1) An EEA national is entitled to reside in the Isle of Man for a period not exceeding 3 months beginning on the date of admission to the Isle of Man provided the EEA national holds a valid national identity card or passport issued by an EEA State.
- (2) A person who is not an EEA national but is a family member who has retained the right of residence or the family member of an EEA national residing in the Isle of Man under paragraph (1) is entitled to reside in the Isle of Man provided that person holds a valid passport.
- (3) An EEA national or the family member of an EEA national who is an unreasonable burden on the social assistance system of the Isle of Man does not have a right to reside under this regulation.
- (4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside under this regulation where the Governor or an immigration officer has made a decision under regulation 24(6)(b) (decision to remove on grounds of public policy, public security or public health), 25(1) (refusal to issue residence documentation etc), 26(1) (cancellation of a right of residence), 27(3) (misuse of right to reside) or 32(1) (revocation of admission), or an order under regulation 24(5) (exclusion order) or 33(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect.

**16 Extended right of residence**

- (1) A qualified person is entitled to reside in the Isle of Man for as long as that person remains a qualified person.
- (2) A Person ("P") who is a family member of a qualified person residing in the Isle of Man under paragraph (1) or of an EEA national with a right of permanent residence under regulation 17 is entitled to remain in the Isle of Man for so long as P remains the family member of that person or EEA national.
- (3) A family member who has retained the right of residence is entitled to reside in the Isle of Man for so long as that person remains a family member who has retained the right of residence.
- (4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside in the Isle of Man under this regulation where the Governor or an immigration officer has made a decision under regulation 24(6)(b), 25(1), 26(1), 27(3) or 32(1), or an order under regulation 24(5) (exclusion order) or 33(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect.

**17 Right of permanent residence**

- (1) The following persons acquire the right to reside in the Isle of Man permanently —
  - (a) an EEA national who has resided in the British Islands in accordance with these Regulations for a continuous period of 5 years;
  - (b) a family member of an EEA national who is not an EEA national but who has resided in the British Islands with the EEA national in accordance with these Regulations for a continuous period of 5 years;
  - (c) a worker or self-employed person who has ceased activity;
  - (d) the family member of a worker or self-employed person who has ceased activity, provided —
    - (i) the person was the family member of the worker or self-employed person at the point the worker or self-employed person ceased activity; and
    - (ii) at that point, the family member enjoyed a right to reside on the basis of being the family member of that worker or self-employed person;
  - (e) a person who was the family member of a worker or self-employed person where —
    - (i) the worker or self-employed person has died;
    - (ii) the family member resided in the Isle of Man with the worker or self-employed person immediately before the death; and
    - (iii) the worker or self-employed person had resided continuously in the British Islands for at least 2 years immediately before dying or the death was the result of an accident at work or an occupational disease;
  - (f) a person who —
    - (i) has resided in the British Islands in accordance with these Regulations for a continuous period of 5 years; and
    - (ii) was, at the end of the period, a family member who has retained the right of residence.
- (2) Residence in the British Islands as a result of a derivative right to reside does not constitute residence for the purpose of this regulation.
- (3) The right of permanent residence under this regulation is lost through absence from the British Islands for a period exceeding two years.
- (4) A person who satisfies the criteria in this regulation is not entitled to a right to permanent residence in the Isle of Man where the Governor or an immigration officer as the case may be, has made a decision under

regulation 24(6)(b), 25(1), 26(1), 27(3) or 32(1), or an order under regulation 24(5) (exclusion order) or 33(3) (deportation order), unless that decision or order, as the case may be, is set aside, revoked or otherwise no longer has effect.

## 18 Derivative right to reside

- (1) A person has a derivative right to reside during any period in which the person —
  - (a) is not an exempt person; and
  - (b) satisfies each of the criteria in one or more of paragraphs (2) to (6).
- (2) The criteria in this paragraph are that —
  - (a) the person is the primary carer of an EEA national; and
  - (b) the EEA national —
    - (i) is under the age of 18;
    - (ii) resides in the Isle of Man as a self-sufficient person; and
    - (iii) would be unable to remain in the Isle of Man if the person left the Isle of Man for an indefinite period.
- (3) The criteria in this paragraph are that —
  - (a) any of the person's parents ("PP") is an EEA national who resides or has resided in the Isle of Man;
  - (b) both the person and PP reside or have resided in the Isle of Man at the same time, and during such a period of residence, PP has been a worker in the Isle of Man; and
  - (c) the person is in education in the Isle of Man.
- (4) The criteria in this paragraph are that —
  - (a) the person is the primary carer of a person satisfying the criteria in paragraph (3) ("PPP"); and
  - (b) PPP would be unable to continue to be educated in the Isle of Man if the person left the Isle of Man for an indefinite period.
- (5) The criteria in this paragraph are that —
  - (a) the person is the primary carer of a British citizen ("BC");
  - (b) BC is residing in the Isle of Man; and
  - (c) BC would be unable to reside in the Isle of Man or in another EEA State if the person left the Isle of Man for an indefinite period.
- (6) The criteria in this paragraph are that —
  - (a) the person is under the age of 18;
  - (b) the person does not have leave to enter, or remain in, the Isle of Man under the 1971 Act;



- (c) the person's primary carer is entitled to a derivative right to reside in the Isle of Man under paragraph (2), (4) or (5); and
  - (d) the primary carer would be prevented from residing in the Isle of Man if the person left the Isle of Man for an indefinite period.
- (7) In this regulation —
  - (a) "education" excludes nursery education but does not exclude education received before the compulsory school age where that education is equivalent to the education received at or after the compulsory school age;
  - (b) "worker" does not include a jobseeker or a person treated as a worker under regulation 7(2);
  - (c) an "exempt person" is a person —
    - (i) who has a right to reside under another provision of these Regulations;
    - (ii) who has the right of abode under section 2 of the 1971 Act;
    - (iii) to whom section 8 of the 1971 Act, or an order made under subsection (2) of that section, applies; or
    - (iv) who has indefinite leave to enter or remain in the Isle of Man.
- (8) A person is the "primary carer" of another person ("AP") if —
  - (a) the person is a direct relative or a legal guardian of AP; and
  - (b) either —
    - (i) the person has primary responsibility for AP's care; or
    - (ii) shares equally the responsibility for AP's care with one other person.
- (9) In paragraph (2)(b)(iii), (4)(b) or (5)(c), if the role of primary carer is shared with another person in accordance with paragraph (8)(b)(ii), the words "the person" are to be read as "both primary carers".
- (10) Paragraph (9) does not apply if the person with whom care responsibility is shared acquired a derivative right to reside in the Isle of Man as a result of this regulation prior to the other person's assumption of equal care responsibility.
- (11) A person is not to be regarded as having responsibility for another person's care for the purpose of paragraph (8) on the sole basis of a financial contribution towards that person's care.
- (12) A person does not have a derivative right to reside where the Governor or an immigration officer has made a decision under regulation 24(6)(b), 25(1); 26(1), 27(3) or 32(1), unless that decision is set aside or otherwise no longer has effect.

## PART 4: RESIDENCE DOCUMENTATION

### 19 Issue of a document certifying an extended right of residence

- (1) The Governor must issue as soon as possible a document certifying an extended right of residence to person who is not an EEA national and is the family member of a qualified person or of an EEA national with a right of permanent residence under regulation 17 on application and production of —
  - (a) a valid passport; and
  - (b) proof that the applicant is such a family member.
- (2) The Governor must issue a document certifying an extended right of residence to a family member who has retained the right of residence on application and production of —
  - (a) a valid passport; and
  - (b) proof that the applicant is such a family member.
- (3) The Governor may issue a document certifying an extended right of residence to an extended family member not falling within regulation 8 (3) who is not an EEA national on application if —
  - (a) the application is accompanied or joined by a valid passport;
  - (b) the relevant EEA national is a qualified person or an EEA national with a right of permanent residence under regulation 17; and
  - (c) in all the circumstances it appears to the Governor appropriate to issue the document certifying an extended right of residence.
- (4) Where the Governor receives an application under paragraph (3) an extensive examination of the personal circumstances of the applicant must be undertaken by the Governor and if the application is refused, the Governor must give reasons justifying the refusal unless this is contrary to the interests of national security.
- (5) A document certifying an extended right of residence issued under this regulation is valid for —
  - (a) five years from the date of issue; or
  - (b) in the case of a document certifying an extended right of residence issued to the family member or extended family member of a qualified person, the envisaged period of residence in the Isle of Man of the qualified person;whichever is the shorter.
- (6) A document certifying an extended right of residence —
  - (a) is proof of the holder's right to reside on the date of issue;
  - (b) is no longer valid if the holder ceases to have a right to reside under these Regulations;

- (c) is invalid if the holder never had a right to reside under these Regulations.
- (7) This regulation is subject to regulations 25 and 26.

## **20 Issue of a document certifying permanent residence**

- (1) The Governor must as soon as possible, issue an EEA national with a right of permanent residence under regulation 17 with a document certifying permanent residence on application and the production of —
  - (a) a valid national identity card or passport issued by an EEA State; and
  - (b) proof that the EEA national has a right of permanent residence.
- (2) The Governor must issue a person who is not an EEA national who has a right of permanent residence under regulation 17 with a document certifying permanent residence no later than 6 months after an application is received and the production of —
  - (a) a valid passport; and
  - (b) proof that the person has a right of permanent residence.
- (3) A document certifying permanent residence is —
  - (a) proof that the holder had a right to reside under regulation 17 on the date of issue;
  - (b) no longer valid if the holder ceases to have a right of permanent residence under regulation 17;
  - (c) invalid if the holder never had a right of permanent residence under regulation 17.
- (4) This regulation is subject to regulations 25 and 26.

## **21 Issue of a document certifying a derivative right of residence**

- (1) The Governor must issue a person with a document certifying a derivative right of residence on application and on production of —
  - (a) a valid national identity card issued by an EEA State or a valid passport; and
  - (b) proof that the applicant has a derivative right to reside under regulation 18.
- (2) On receipt of an application under (1), the Governor must issue the applicant this document as soon as possible.
- (3) A document certifying an derivative right of residence issued under paragraph (1) is valid for —
  - (a) five years from the date of issue; or

- (b) any earlier date specified by the Governor when issuing the document.
- (4) A document certifying a derivative right of residence is —
  - (a) proof of the holder's derivative right to reside on the date of issue;
  - (b) no longer valid if the holder ceases to have a derivative right to reside under regulation 18;
  - (c) invalid if the holder never had a derivative right to reside under regulation 18.
- (5) This regulation is subject to regulations 25 and 26.

## **22 Procedure for applications for documentation under this Part and regulation 14**

- (1) An application for documentation under this Part, or for an EEA family permit under regulation 14 must be made by post or in person, using the relevant application form, specified on the Isle of Man immigration website <https://www.gov.im/immigration>.
- (2) All applications must —
  - (a) be accompanied by the evidence or proof required by this Part or regulation 14, as the case may be, as well as that required by paragraph (5); and
  - (b) be complete.
- (3) An application for documentation issued under this Part must be submitted while the applicant is in the Isle of Man.
- (4) When an application is submitted otherwise than in accordance with the requirements in this regulation, it is invalid.
- (5) Where an application for documentation under this Part is made by a person who is not an EEA national on the basis that the person is or was the family member of an EEA national or an extended family member of an EEA national, the application must be accompanied by a valid national identity card or passport in the name of that EEA national.
- (6) Where —
  - (a) there are circumstances beyond the control of an applicant for documentation under this Part; and
  - (b) as a result, the applicant is unable to comply with the requirements to submit the application using the relevant form specified on the Isle of Man immigration website,

the Governor may accept an application submitted by post or in person which does not use the relevant application form specified on the Isle of Man immigration website.

**23 Verification of a right of residence**

- (1) This regulation applies where the Governor —
  - (a) has reasonable doubt as to whether a person (“A”) has a right to reside or a derivative right to reside; or
  - (b) wants to verify the eligibility of a person (“A”) to apply for an EEA family permit or documentation issued under Part 3.
- (2) Where this regulation applies, the Governor may invite A to —
  - (a) provide evidence to support the existence of a right to reside, or to support an application for an EEA family permit or documentation issued under this Part; or
  - (b) attend an interview with the Governor.
- (3) If A purports to have a right to reside on the basis of a relationship with another person (“B”), (including, where B is a British citizen, through having lived with B in another EEA State), the Governor may invite B to —
  - (a) provide information about their relationship or residence in another EEA State; or
  - (b) attend an interview with the Governor.
- (4) If without good reason A or B (as the case may be) —
  - (a) fails to provide the information requested;
  - (b) on at least two occasions, fails to attend an interview if so invited;the Governor may draw any factual inferences about A’s entitlement to a right to reside as appear appropriate in the circumstances.
- (5) The Governor may decide following the drawing of an inference under paragraph (4) that A does not have or ceases to have a right to reside.
- (6) But the Governor must not decide that A does not have or ceases to have a right to reside on the sole basis that A failed to comply with this regulation.
- (7) This regulation may not be invoked systematically.

**PART 5: REFUSAL OF ADMISSION AND REMOVAL ETC****24 Exclusion and removal from the Isle of Man**

- (1) A person is not entitled to be admitted to the Isle of Man by virtue of regulation 13 if a refusal to admit that person is justified on grounds of public policy, public security or public health in accordance with regulation 28.
- (2) A person is not entitled to be admitted to the Isle of Man by virtue of regulation 13 if that person is subject to a deportation or exclusion order.

- (3) A person is not entitled to be admitted to the Isle of Man by virtue of regulation 13 if the Governor considers there to be reasonable grounds to suspect that the person's admission would lead to the misuse of a right to reside under regulation 27(1).
- (4) A person is not entitled to be admitted to the Isle of Man as the family member of an EEA national under regulation 13(2) unless at the time of arrival —
  - (a) that person is accompanying the EEA national or joining the EEA national in the Isle of Man; and
  - (b) the EEA national has a right to reside.
- (5) If the Governor considers that the exclusion of the EEA national or the family member of an EEA national is justified on the grounds of public policy, public security or public health in accordance with regulation 28 the Governor may make an order prohibiting that person from entering the Isle of Man.
- (6) Subject to paragraphs (7) and (8), an EEA national who has entered the Isle of Man or the family member of such a national who has entered the Isle of Man may be removed if —
  - (a) that person does not have or ceases to have a right to reside under these Regulations;
  - (b) the Governor has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 28; or
  - (c) the Governor has decided that the person's removal is justified on grounds of misuse of rights under regulation 27(3).
- (7) A person must not be removed under paragraph (6) —
  - (a) as the automatic consequence of having recourse to the social assistance system of the Isle of Man; or
  - (b) if that person has leave to remain in the Isle of Man under the 1971 Act unless that person's removal is justified on the grounds of public policy, public security or public health in accordance with regulation 28.
- (8) A decision under paragraph (6)(b) must state that upon execution of any deportation order arising from that decision, the person against whom the order was made is prohibited from entering the Isle of Man —
  - (a) until the order is revoked; or
  - (b) for the period specified in the order.
- (9) A decision taken under paragraph (6)(b) or (c) has the effect of terminating any right to reside otherwise enjoyed by the individual concerned.

**25 Refusal to issue or renew and revocation of residence documentation**

- (1) The Governor may refuse to issue, revoke or refuse to renew a document certifying an extended right of residence or a document certifying permanent residence if the refusal or revocation is justified on grounds of public policy, public security or public health, or on grounds of a misuse of a right to reside in accordance with regulation 27(3).
- (2) A decision under regulation 24(6) or 33(4) to remove a person from the Isle of Man, or a decision under regulation 32 to revoke a person's admission to the Isle of Man invalidates a document certifying an extended right of residence or a document certifying permanent residence held by that person or an application made by that person for such a document.
- (3) The Governor may revoke or refuse to renew a document certifying an extended right of residence if the holder of the document has ceased to have, or never had, a right to reside under these Regulations.
- (4) The Governor may revoke or refuse to renew a document certifying permanent residence if the holder of the document has ceased to, or never had a right of permanent residence under regulation 17.
- (5) An immigration officer may, at the time of a person's arrival in the Isle of Man —
  - (a) revoke that person's document certifying an extended right of residence if the person is not at that time the family member of a qualified person or of an EEA national who has a right of permanent residence under regulation 17 or a family member who has retained the right of residence or a person with a right of permanent residence under regulation 17;
  - (b) revoke that person's document certifying permanent residence if the person is not at that time a person with a right of permanent residence under regulation 17.
- (6) A decision maker may at any time revoke a person's EEA family permit if —
  - (a) the revocation is justified on grounds of public policy, public security or public health; or
  - (b) the person is not at that time the family member of an EEA national with the right to reside in the Isle of Man under these Regulations or is not accompanying that EEA national or joining that EEA national in the Isle of Man.
- (7) Any action taken under this regulation on grounds of public policy, public security or public health must be in accordance with regulation 28.

## 26 Cancellation of a right to reside

- (1) Where the conditions in paragraph (2) are met the Governor may cancel a person's right to reside.
- (2) The conditions in this paragraph are met where —
  - (a) a person has a right to reside in the Isle of Man as a result of these Regulations;
  - (b) the Governor has decided that the cancellation of that person's right to reside in the Isle of Man is justified on the grounds of public policy, public security or public health in accordance with regulation 28 or on grounds of a misuse of a right to reside in accordance with regulation 27(3);
  - (c) the circumstances are such that the Governor cannot make a decision under regulation 25(1); and
  - (d) it is not possible for the Governor to remove the person from the Isle of Man under regulation 24(6)(b) or (c).

## 27 Misuse of a right to reside

- (1) The misuse of a right to reside occurs where a person —
  - (a) observes the requirements of these Regulations in circumstances which do not achieve the purpose of these Regulations (as determined by reference to Council Directive 2004/38/EC<sup>8</sup> and the EU Treaties); and
  - (b) intends to obtain an advantage from these Regulations by engaging in conduct which artificially creates the conditions required to satisfy the criteria set out in these Regulations.
- (2) Such misuse includes attempting to enter the Isle of Man within 12 months of being removed under regulation 24(6)(a), where the person attempting to do so is unable to provide evidence that, upon re-entry to the Isle of Man, the conditions for a right to reside, other than the initial right of residence under regulation 15, will be met.
- (3) The Governor may take an EEA decision on the grounds of misuse of rights where there are reasonable grounds to suspect the misuse of a right to reside and it is proportionate to do so.
- (4) Where, as a result of paragraph (2), the removal of a person under regulation 24(6)(a) may prevent that person from returning to the Isle of Man during the 12 month period following removal, during that 12 month period the person who was removed may apply to the Governor to have the effect of paragraph (2) set aside on the grounds that there has been a material change in the circumstances which justified that person's removal under regulation 24(6)(a).

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<sup>8</sup> OJ No. L 158, 30.4.04



- (5) An application under paragraph (4) may only be made whilst the applicant is outside the British Islands.
- (6) This regulation may not be invoked systematically.

## **28 Decisions taken on grounds of public policy, public security and public health**

- (1) In this regulation, a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.
- (2) A relevant decision may not be taken to serve economic ends.
- (3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 17 except on serious grounds of public policy and public security.
- (4) A relevant decision may not be taken except on imperative grounds in respect of an EEA national who has a right of permanent residence under regulation 17 and who –
  - (a) has a right of permanent residence under regulation 17 and has resided in the British Islands for a continuous period of at least ten years prior to the relevant decision; or
  - (b) is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20<sup>th</sup> November 1989.
- (5) The public policy and public security requirements of the Isle of Man include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles –
  - (a) the decision must comply with the principle of proportionality;
  - (b) the decision must be based exclusively on the personal conduct of the person concerned;
  - (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interest of society, taking into account past conduct of the person and that the threat does not need to be imminent;
  - (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
  - (e) a person’s previous criminal convictions do not in themselves justify the decision;
  - (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.

- (6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person (“P”) who is resident in the Isle of Man, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P’s length of residence in the Isle of Man, P’s social and cultural integration into the Isle of Man and the extent of P’s links with P’s country of origin.
- (7) In the case of a relevant decision taken on grounds of public health –
  - (a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2012<sup>9</sup>; or
  - (b) if the person concerned is in the Isle of Man, any disease occurring after the three month period beginning on the date on which a person arrived in the Isle of Man,  
does not constitute grounds for the decision.
- (8) A court or an adjudicator considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc).

## 29 Application of Part 4 to a person with a derivative right to reside

- (1) This regulation applies where a person –
  - (a) would, but for this Part of these Regulations, be entitled to a derivative right to reside (other than a derivative right to reside conferred by regulation 18(3));
  - (b) holds a document certifying a derivative right of residence; or
  - (c) has applied for a document certifying a derivative right of residence.
- (2) Where this regulation applies, this Part of these Regulations applies as though –
  - (a) references to “the family member of an EEA national” referred instead to “a person with a derivative right to reside”;
  - (b) references to a document certifying an extended right of residence or a document certifying a permanent right of residence referred instead to a “document certifying a derivative right of residence”;
  - (c) regulation 25(5) instead conferred on an immigration officer the power to revoke a document certifying a derivative right of residence where the holder is not at that time a person with a derivative right to reside; and
  - (d) regulations 25(4) and 28(3) and (4) were omitted.

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<sup>9</sup> S.I. 2010/659

## PART 6: PROCEDURE IN RELATION TO EEA DECISIONS

### 30 Person claiming right of admission

- (1) This regulation applies to a person who claims right of admission to the Isle of Man under regulation 13 as —
  - (a) a person, not being an EEA national, who —
    - (i) is a family member of an EEA national;
    - (ii) is a family member who has retained the right of residence;
    - (iii) has a derivative right to reside;
    - (iv) has a right of permanent residence under regulation 17; or
    - (v) is in possession of a qualifying EEA State residence card; or
  - (b) an EEA national, where there is reason to believe that the EEA national may be a person to whom regulation 24(1), (2), (3) or (4) applies.
- (2) A person to whom this regulation applies is to be treated as if that person were a person seeking leave to enter the Isle of Man under the 1971 Act for the purposes of paragraphs 2, 3, 4, 7 and 16 to 18 of Schedule 2<sup>10</sup> to the 1971 Act (administrative provisions as to control on entry etc.), except that —
  - (a) the reference in paragraph 2(1) to the purpose for which the immigration officer may examine any persons who have arrived in the Isle of Man is to be read as a reference to the purpose of determining whether the person is to be granted admission under these Regulations;
  - (b) the references in paragraphs 3, 7, and 16(1) to a person who is, or may be, given leave to enter are to be read as references to a person who is, or may be, granted admission under these Regulations; and
  - (c) a medical examination is not to be carried out under paragraph 2 or paragraph 7 as a matter of routine and may only be carried out within three months of the person's arrival in the Isle of Man.
- (3) For so long as a person to whom this regulation applies, is detained or granted bail whilst liable to be detained under the powers conferred by Schedule 2 to the 1971 Act, the person is deemed not to have been admitted to the Isle of Man.

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<sup>10</sup> The relevant parts of Schedule 2 were amended by the Criminal Justice Act 1972 (c.71), paragraph 4 of Schedule 4 to the British Nationality Act 1981 (c.61), paragraph 5 of Schedule 2 to the Asylum and Immigration Act 1996 (c.49), section 140(1) and (2) and paragraphs 43, 56, 58, 60 and 61 of Schedule 14 to the Immigration and Asylum Act 1999 (c.33), section 72(5) of the Nationality, Immigration and Asylum Act 2002 (c.41), and sections 27(1), 42(1) and (2) of the Immigration, Asylum and Nationality Act 2006 (c.13).

### 31 Person refused admission

- (1) This regulation applies to a person who is in the Isle of Man and has been refused admission to the Isle of Man —
  - (a) because that person does not meet the requirements of regulation 13 (including where that person does not meet those requirements because that person's EEA family permit, document certifying an extended right of residence, document certifying permanent residence or document certifying a derivative right of residence has been revoked by an immigration officer in accordance with regulation 25); or
  - (b) in accordance with regulation 24(1), (2), (3), or (4).
- (2) A person to whom this regulation applies, is to be treated as if the person were a person refused leave to enter under the 1971 Act for the purpose of paragraphs 8, 10, 10A, 11 and 16 to 19 of Schedule 2<sup>11</sup> to the 1971 Act, except that the reference in paragraph 19 to a certificate of entitlement, entry clearance or work permit is to be read as a reference to an EEA family permit, a document certifying an extended right of residence, a document certifying permanent residence, a document certifying a derivative right of reside or a qualifying EEA State residence card.

### 32 Revocation of admission

- (1) This regulation applies to a person admitted to the Isle of Man under regulation 13 in circumstances where, under regulation 24(1), (2) or (3) that person was not entitled to be admitted.
- (2) Paragraph 6(2) of Schedule 2 to the 1971 Act (administrative provisions as to control on entry: refusal of leave to enter) applies to a person to whom this regulation applies, as though the references —
  - (a) to that person's examination under paragraph 2 of Schedule 2 to the 1971 Act were to that paragraph as applied by regulation 30(2)(a) and (c);
  - (b) to notices of leave to enter the Isle of Man were to a decision to admit that person to the Isle of Man under these Regulations; and
  - (c) to the cancellation of such a notice and the refusal of leave to enter were to revocation of the decision to admit that person to the Isle of Man under this regulation.
- (3) Where a person's admission to the Isle of Man is revoked, that person is to be treated as a person to whom admission to the Isle of Man has been refused and regulation 31 applies accordingly.

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<sup>11</sup> The relevant parts of Schedule 2 were amended by paragraph 3(1) of Schedule 4 to the British Nationality Act 1981 (c.61), paragraph 9 of the Schedule to the Immigration Act 1988 (c.14), paragraph 8 of Schedule 2 to the Asylum and Immigration Act 1996 (c.49), section 140(1) of and paragraphs 43 and 60 of Schedule 14 to the Immigration and Asylum Act 1999 (c.33), and section 73(5) and paragraph 4 of Schedule 7 to the Nationality, Immigration and Asylum Act 2002 (c.41) and section 42(1).

### 33 Person subject to removal

- (1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the Isle of Man under regulation 24(6)(b), that person may be detained under the authority of the Governor pending a decision whether or not to remove the person under that regulation, and paragraphs 17 to 18 of Schedule 2 to the 1971 Act apply in relation to the detention of such a person as those paragraphs apply in relation to a person who may be detained under paragraph 16 of that Schedule.
- (2) Where a decision is taken to remove a person under regulation 24(6)(a) or (c), the person is to be treated as if the person were a person to whom section 10(1) of the 1999 Act applies, and section 10 of that Act (removal of persons unlawfully in the Isle of Man) is to apply accordingly.
- (3) Where a decision is taken to remove a person under regulation 24(6)(b), the person is to be treated as if the person were a person to whom section 3(5)(a)<sup>12</sup> of the 1971 Act (liability to deportation) applies, and section 5<sup>13</sup> of that Act (procedure for deportation) and Schedule 3<sup>14</sup> to that Act (supplementary provision as to deportation) are to apply accordingly.
- (4) A person who enters the Isle of Man in breach of a deportation or exclusion order, or in circumstances where that person was not entitled to be admitted under regulation 24(1) or (3), is removable as an illegal entrant under Schedule 2 to the 1971 Act and the provisions of that Schedule apply accordingly.
- (5) Where a deportation order is made against a person but the person is not removed under the order during the two year period beginning on the date on which the order is made, the Governor may only take action to remove the person under the order at the end of that period if, having assessed whether there has been any material change in circumstances since the deportation order was made, the Governor considers that the removal continues to be justified on the grounds of public policy, public security or public health.
- (6) A person to whom this regulation applies must be allowed one month to leave the Isle of Man, beginning on the date on which the decision to

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<sup>12</sup> Section 4 was amended by paragraphs 2 and 4 of Schedule 4 to the British Nationality Act 1981 (c.61), paragraph 1 of the Schedule to the Immigration Act 1988 (c.14), paragraph 1(1) of Schedule 2 to the Asylum and Immigration Act 1996 (c.49), paragraphs 43 and 44 of Schedule 14 to the Immigration and Asylum Act 1999 (c.33) and section 30 of the Immigration, Asylum and Nationality Act 2006 (c.13).

<sup>13</sup> Section 5 was amended by paragraph 2 of Schedule 4 to the British Nationality Act 1981 (c.61), paragraph 2 of Schedule 2 to the Asylum and Immigration Act 1996 (c.49) and paragraph 2 of the Schedule to the Immigration Act 1988 (c.14).

<sup>14</sup> Schedule 3 was amended by Schedule 10 of the Criminal Justice Act 1982 (c.48), paragraph 10(3) of the Schedule to the Immigration Act 1988 (c.14), paragraph 13 of Schedule 2 to the Asylum and Immigration Act 1993 (c.33), paragraph 7 of Schedule 7 to the Nationality, Immigration and Asylum Act 2002 (c.41), section 34 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19) and section 53 of the Immigration, Asylum and Nationality Act 2006 (c.13).

remove is communicated before being removed because of that decision except –

- (a) in duly substantiated cases of urgency;
  - (b) where the person is detained pursuant to the sentence or order of any court;
  - (c) where the person is a person to whom paragraph (4) applies.
- (7) Paragraph (6) does not apply where a decision has been taken under regulation 24(6) on the basis that the relevant person –
- (a) has ceased to have a derivative right to reside; or
  - (b) is a person who would have had a derivative right to reside but for the effect of a decision to remove under regulation 24(6)(b).

### **34 Human rights considerations and interim orders to suspend removal**

- (1) This regulation applies where the Governor intends to give directions for the removal of a person (“P”) to whom regulation 33(3) applies, in circumstances where –
- (a) P has not appealed against the EEA decision to which regulation 33(3) applies, but would be entitled, and remains within time, to do so from within the Isle of Man (ignoring any possibility of an appeal out of time with permission); or
  - (b) P has so appealed but the appeal has not been finally determined.
- (2) The Governor may only give directions for P’s removal if the Governor certifies that, despite the appeals process not having been begun or not having been finally determined, removal of P to the country or territory to which P is proposed to be removed, pending the outcome of P’s appeal, would not be unlawful under section 6 of the Human Rights Act 2001<sup>15</sup> (an Act of Tynwald).
- (3) The grounds upon which the Governor may certify a removal under paragraph (2) include (in particular) that P would not, before the appeal is finally determined, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed.
- (4) If P applies to the appropriate court (whether by means of doleance or statutory appeal for an interim order to suspend enforcement of the removal decision, P may not be removed from the Isle of Man until such time as the decision on the interim order has been taken, except –
- (a) where the removal decision is based on a previous judicial decision;
  - (b) where P has had previous access to doleance; or

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<sup>15</sup> 2001 AT.1

- (c) where the removal decision is based on imperative grounds of public security.
- (5) In this regulation, “finally determined” has the same meaning as in Part 6.

### 35 Revocation of deportation and exclusion orders

- (1) An exclusion order remains in force unless it is revoked by the Governor under this regulation.
- (2) A deportation order remains in force —
  - (a) until the order is revoked under this regulation; or
  - (b) for the period specified in the order.
- (3) A person who is subject to a deportation or exclusion order may only apply to the Governor to have it revoked on the basis that there has been a material change in the circumstances that justified the making of the order.
- (4) An application under paragraph (3) must set out the material change in circumstances relied upon by the applicant and may only be made whilst the applicant is outside the Isle of Man.
- (5) On receipt of an application under paragraph (3), the Governor must revoke the order if the Governor considers that the criteria for making such an order are no longer satisfied.
- (6) The Governor must take a decision on an application under paragraph (2) no later than 6 months after the date on which the application is received.

## PART 7: APPEALS UNDER THESE REGULATIONS

### 36 Interpretation of this Part

- (1) In this Part —
  - “**adjudicator**” means an adjudicator for the purposes of Part 5 of the 2002 Act;
  - “**the Human Rights Convention**” has the same meaning as “**the Convention**” in the Human Rights Act 2001 (an Act of Tynwald)<sup>16</sup>; and
  - “**the Refugee Convention**” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951<sup>17</sup> and the Protocol relating to the Status of Refugees done at New York on 31 January 1967<sup>18</sup>.

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<sup>16</sup> 2001 AT.1

<sup>17</sup> Cmd 9171

<sup>18</sup> Cmnd 3906

- (2) For the purposes of this Part, and subject to paragraphs (3) and (4), an appeal is to be treated as pending during the period when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.
- (3) An appeal is not to be treated as finally determined while a further appeal may be brought; and, if such a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.
- (4) A pending appeal is not to be treated as abandoned solely because the appellant leaves the Isle of Man.

### 37 Appeal rights

- (1) The subject of an EEA decision may appeal against that decision under these Regulations.
- (2) If a person claims to be an EEA national, that person may not appeal under these Regulations without producing a valid national identity card or passport issued by an EEA State.
- (3) If a person claims to be in a durable relationship with an EEA national, that person may not appeal under these Regulations without producing —
  - (a) a valid passport; and
  - (b) either —
    - (i) an EEA family permit; or
    - (ii) sufficient evidence to satisfy the Governor that the person is in a relationship with the EEA national.
- (4) If a person to whom paragraph (2) does not apply claims to be the family member of an EEA national under regulation 8, the relative of an EEA national who is an extended family member under regulation 9, or a family member who has retained the right of residence under regulation 12, that person may not appeal under these Regulations without producing —
  - (a) a valid passport; and
  - (b) either —
    - (i) an EEA family permit; or
    - (ii) a qualifying EEA State residence card; or
    - (iii) in the case of a person claiming to be the family member of an EEA national, proof that the criteria in regulation 8 are met; or
    - (iv) in the case of a person claiming to be a family member who has retained the right of residence, proof that the criteria in regulation 12 are met.



- (5) If a person (“P”) claims to have a derivative right to reside, P may not appeal under these Regulations unless P produces a valid national identity card issued by an EEA State or a valid passport, and either —
- (a) an EEA family permit; or
  - (b) where P claims to have a derivative right to reside as a result of —
    - (i) regulation 18(2), proof that P is a direct relative or legal guardian of an EEA national who is under the age of 18;
    - (ii) regulation 18(3), proof that P is the child of an EEA national;
    - (iii) regulation 18(4), proof that P is a direct relative or other legal guardian of the child of an EEA national;
    - (iv) regulation 18(5), proof that P is a direct relative or legal guardian of a British citizen;
    - (v) regulation 18(6), proof that P is under the age of 18 and is a dependant of a person satisfying the criteria in paragraph (i), (iii) or (iv).
- (6) If a person claims to be entitled to a right to reside under regulation 10 (family members of British citizens), that person may not appeal without producing a valid passport and either —
- (a) an EEA family permit; or
  - (b) a qualifying EEA State residence card; and
    - (i) proof that the criteria to be a family member of the British citizen are met; and
    - (ii) proof that the British citizen is residing, or did reside, in another EEA State as a worker, self-employed person, self-sufficient person or student.
- (7) The Governor or an immigration officer may certify a ground for the purposes of paragraph (8) if it has been considered in a previous appeal brought under these Regulations or under section 82(1) of the 2002 Act.
- (8) A person may not bring an appeal under these Regulations on a ground certified under paragraph (7) or rely on such a ground in an appeal brought under these Regulations.
- (9) An appeal under these Regulations lies to an adjudicator.
- (10) The provisions of or made under the 2002 Act referred to in Schedule 2 shall have effect for the purposes of an appeal under these Regulations to an adjudicator in accordance with that Schedule.

### 38 Out of country appeals

- (1) Subject to paragraphs (2) and (3), a person may not appeal under regulation 37 whilst in the Isle of Man against an EEA decision —

- (a) to refuse to admit that person to the Isle of Man;
  - (b) to revoke that person's admission to the Isle of Man;
  - (c) to make an exclusion order against that person;
  - (d) to refuse to revoke a deportation or exclusion order made against the person;
  - (e) to refuse to issue the person with an EEA family permit;
  - (f) to revoke, or to refuse to issue or renew any document under these Regulations where that decision is taken at a time when the person is outside the Isle of Man; or
  - (g) to remove the person from the Isle of Man following entry to the Isle of Man in breach of a deportation or exclusion order, or in circumstances where that person was not entitled to be admitted pursuant to regulation 24(1), (2), (3) or (4).
- (2) Sub-paragraphs (a) to (c) of paragraph (1) do not apply where the person is in the Isle of Man and —
- (a) the person holds —
    - (i) a valid EEA family permit, document certifying an extended right of residence, document certifying permanent residence, document certifying a derivative right of residence or qualifying EEA State residence card on arrival in the Isle of Man; or
    - (ii) can otherwise prove that the person is resident in the Isle of Man; or
  - (b) the person is deemed not to have been admitted to the Isle of Man under regulation 30(3) but at the date on which notice of the decision to refuse admission is given the person has been in the Isle of Man for at least 3 months.
- (3) Paragraph (1)(g) does not apply where a ground of the appeal is that, in taking the decision, the decision maker acted in breach of the appellant's rights under the Human Rights Convention or the Refugee Convention, unless the Governor certifies that that ground of appeal is clearly unfounded.

### **39 Effect of appeals to an adjudicator**

- (1) This regulation applies to appeals under these Regulations made to an adjudicator.
- (2) If a person in the Isle of Man appeals against an EEA decision to refusing admission to the Isle of Man, any directions for that person's removal from the Isle of Man previously given by virtue of the refusal cease to have effect, except in so far as they have already been carried out, and no directions may be so given while the appeal is pending.

- (3) If a person in the Isle of Man appeals against an EEA decision concerning that person's removal from the Isle of Man, any directions for removal under section 10 of the 1999 Act or Schedule 3 to the 1971 Act for that person's removal from the Isle of Man are to have no effect, except in so far as they have already been carried out, while the appeal is pending.
- (4) The provisions of Part 1 of Schedule 2, or as the case may be, Schedule 3 to the 1971 Act concerning detention and persons liable to detention apply to a person appealing against a refusal of admission or a decision to revoke admission or a removal decision as if they were in force directions for the person's removal from the Isle of Man, except that the person may not be detained on board a ship or aircraft so as to compel that person to leave the Isle of Man while the appeal is pending.
- (5) In calculating the period of two months limited by paragraph 8(2) of Schedule 2 to the 1971 Act for –
  - (a) the giving of directions under that paragraph for the removal of a person from the Isle of Man; and
  - (b) the giving of a notice of intention to give such directions,any period during which there is an appeal pending by that person under Part 5 of the 2002 Act is to be disregarded.
- (6) If a person in the Isle of Man appeals against an EEA decision to remove that person from the Isle of Man, directions for that person's removal are not to be given against the person under section 5 of the 1971 Act while the appeal is pending.
- (7) Paragraph 29 of Schedule 2 to the 1971 Act (grant of bail pending appeal) applies to a person who has an appeal pending under these Regulations as it applies to a person who has an appeal pending under section 82(1) of the 2002 Act.

#### **40 Alternative evidence of identity and nationality**

- (1) Subject to paragraph (2), where a provision of these Regulations requires a person to hold or produce a valid national identity card issued by an EEA State for a valid passport, the Governor may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required document due to circumstances beyond the person's control.
- (2) This regulation does not apply to regulation 13.

**PART 8: GENERAL****41 Considerations of public policy, public security and the fundamental interests of society etc.**

Schedule 1 (Considerations of public policy, public security and the fundamental interests of society etc.) has effect.

**42 Appeals to an Adjudicator**

Schedule 2 (and Appeals to an Adjudicator) has effect.

**43 Effect on other legislation**

Schedule 3 (effect on other legislation) has effect.

**44 Revocations, savings and transitional provisions**

Schedules 4 (revocations and savings) and 5 (transitional provisions) have effect.

**MADE****8 MARCH 2019**

## SCHEDULE 1

CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE  
FUNDAMENTAL INTERESTS OF SOCIETY ETC.

[Regulation 28(8)]

**1 Considerations of public policy, public security and the fundamental interests of society etc.**

- (1) An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the Isle of Man; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated within the Isle of Man.
- (2) Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual's continued presence in the Isle of Man represents a genuine, present and sufficiently serious threat affecting the fundamental interests of society.
- (3) Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the Isle of Man if the alleged integrating links were formed at or around the same time as —
  - (a) the commission of a criminal offence;
  - (b) an act otherwise affecting the fundamental interests of society; or
  - (c) the EEA national or family member of an EEA national was in custody.
- (4) The removal from the Isle of Man of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.
- (5) It is consistent with public policy and public security requirements in the Isle of Man that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including —
  - (a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or

- (b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

## 2 The fundamental interests of society

For the purposes of these Regulations, the fundamental interests of society in the Isle of Man include —

- (a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area.
- (b) maintaining public order;
- (c) preventing social harm;
- (d) preventing the evasion of taxes and duties;
- (e) protecting public services;
- (f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;
- (g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider social harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);
- (h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 28);
- (i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;
- (j) protecting the public;
- (k) acting in the best interests of a child (including where doing so entails refusing a child admission to the Isle of Man, or otherwise taking an EEA decision against a child);
- (l) countering terrorism and extremism and protecting shared values.

**SCHEDULE 2****APPEALS TO AN ADJUDICATOR**

[Regulation 37(10)]

The following provisions of, or made under, the 2002 Act have effect in relation to an appeal under these Regulations to an adjudicator as if it were an appeal against an immigration decision under section 82(1) of that Act —

- (a) section 84(1) (grounds of appeal), except paragraphs (a) and (f);
- (b) sections 85 to 87 (matters to be considered, determination of appeal and successful appeal: direction);
- (c) sections 103E (appeal from an adjudicator);
- (d) section 105 (notice of immigration decision) and any regulations made under that section; and
- (e) section 106 (rules) and any rules made under that section.

**SCHEDULE 3****EFFECT ON OTHER LEGISLATION**

[Regulation 43]

**1 Leave under the 1971 Act**

Where a person has leave to enter or remain under the 1971 Act which is subject to conditions and that person also has a right to reside under these Regulations, those conditions do not have effect for as long as the person has that right to reside.

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

- (1) For the purposes of the 1971 Act and the British Nationality Act 1981 (of Parliament)<sup>19</sup>, a person who has a permanent right of residence under regulation 17 shall be regarded as a person who is in the Isle of Man without being subject under the immigration laws to any restriction on the period for which he may remain.
- (2) But a qualified person, the family member of a qualified person, a person with a derivative right to reside and a family member who has retained the right of residence shall not, by virtue of that status, be so regarded for those purposes.

**3 Carriers' liability under the 1999 Act**

For the purposes of satisfying a requirement to produce a visa under section 40(1)(b) of the 1999 Act (charges in respect of passenger without proper documents), "a visa of the required kind" includes an EEA family permit, a document certifying an extended right of residence, a document certifying permanent residence, a document certifying a derivative right of residence or a qualifying EEA State residence card, required for admission under regulation 14(2).

**4 Appeals under the 2002 Act and previous Immigration Acts**

- (1) The following EEA decisions shall not be treated as immigration decisions for the purpose of section 82(2) of the 2002 Act (right of appeal against an immigration decisions) —
  - (a) a decision that a person is to be removed under regulation 24(6)(a) by way of a direction under section 10(1)(a) of the 1999 Act (as provided for by regulation 33(2));

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<sup>19</sup> 1981 c.61.



- (b) a decision to remove a person under regulation 24(6)(b) by making a deportation order under section 5(1) of the 1971 Act (as provided for by regulation 33(3));
  - (c) a decision to remove a person mentioned in regulation 33(4) by way of directions under paragraphs 8 to 10 of Schedule 2 to the 1971 Act.
- (2) A person who has been issued with a document certifying permanent residence under these Regulations shall have no right of appeal under section 82(1) of the 2002 Act. Any existing appeal under that section shall be treated as abandoned.
- (3) In addition to the national of a State which is a contracting party to the agreement referred to in section 84(2) of the 2002 Act, a Swiss national shall also be treated as an EEA national for the purposes of section 84(1)(d) of that Act.
- (4) An appeal under these Regulations against an EEA decision shall be treated as an appeal under section 82(1) of the 2002 Act against an immigration decision for the purposes of section 96(1)(a) of the 2002 Act.
- (5) Section 120 of the 2002 Act shall apply to a person if an EEA decision has been taken in respect of that person and, accordingly, the Governor or an immigration officer may by notice require a statement from that person under subsection (2) of that section and that notice shall have effect for the purpose of section 96(2) of the 2002 Act.

**SCHEDULE 4**  
**REVOCATIONS AND SAVINGS**

[Regulation 44]

**1 Revocations**

The following Regulations are revoked —

- (a) Immigration (European Economic Area) Regulations 2009<sup>20</sup>;
- (b) Immigration (European Economic Area) (Amendment) Regulations 2012<sup>21</sup>;
- (c) Immigration (European Economic Area) (Amendment) Regulations 2016<sup>22</sup> Statutory Document No.2016/0280.

**2 Savings and modifications**

- (1) Despite the revocation of the 2009 Regulations by paragraph 1(a), those Regulations continue to apply —
  - (a) in respect of an appeal under those Regulations against an EEA decision which is pending (within the meaning of regulation 25(2) of those 2009 Regulations) on the day after the commencement of the Immigration (Isle of Man)(Amendment) Order 2019;
  - (b) in a case where a person has, on the day after the commencement of the Immigration (Isle of Man)(Amendment) Order 2019, a right under those Regulations to appeal against an EEA decision.
- (2) For the purpose of this paragraph, “EEA decision” has the meaning given in regulation 3 of the 2009 Regulations and the definition of “EEA decision” in that regulation does not apply.

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<sup>20</sup> SD 2009/635.

<sup>21</sup> SD 2012/151.

<sup>22</sup> SD 2016/280.

**SCHEDULE 5****TRANSITIONAL PROVISIONS**

[Regulation 44]

**1 Existing documents**

- (1) An EEA family permit issued under regulation 13 of the 2009 Regulations on the day after the commencement of the Immigration (Isle of Man)(Amendment) Order 2019 is to be treated as an EEA family permit issued under regulation 14 of these Regulations.
- (2) Any document issued under Part 3 of the 2009 Regulations is to be treated as though issued under Part 3 of these Regulations.
- (3) Nothing in this paragraph extends the validity of any document issued under the 2009 Regulations beyond that document's original period of validity.

**2 Outstanding applications**

- (1) An application for —
  - (a) an EEA family permit;
  - (b) a document certifying an extended right of residence; or
  - (c) a document certifying permanent residencemade but not determined on the day after the commencement of the Immigration (Isle of Man)(Amendment) Order 2019 is to be treated as having been made under these Regulations.
- (2) But regulation 22 and the words in parentheses in paragraph (b) of the definition of EEA decision in regulation 3(3) are of no application to such an application made on the day after the commencement of the Immigration (Isle of Man)(Amendment) Order 2019.

**3 Removal decisions, deportation orders and exclusion order under the 2009 Regulations**

- (1) A decision to remove a person under regulation 18(3) of the 2009 Regulations must be treated as a decision to remove that person under regulation 24(6)(a) or (b) of these Regulations, as the case may be.
- (2) A deportation order under regulation 23(3) of the 2009 Regulations must be treated as a deportation order made under regulation 33(3) of these Regulations.

- (3) Until the coming into force of Part 4 in its entirety, a deportation order to which sub-paragraph (2) applies has effect until revoked by the Governor.
- (4) An exclusion order made under regulation 18(2) of the 2009 Regulations must be treated as though having been made under regulation 22(5) of these Regulations.
- (5) A person removed under regulation 18(3) of the 2009 Regulations on the day after the commencement of the Immigration (Isle of Man)(Amendment) Order 2019 is to be taken into account for the purposes of regulation 27(2).
- (6) Where sub-paragraph (5) applies to a person, regulation 27 has effect as though the references to “12” were to “38”.

#### **4 Periods of residence prior to the coming into force of these Regulations**

- (1) Any period of time during which an EEA national (“P”) resided in the Isle of Man in accordance with the conditions listed in sub-paragraphs (2) or (3) is to be taken into account for the purpose of calculating periods of residence in the Isle of Man in accordance with these Regulations.
- (2) The condition in this paragraph is that P resided in or was treated as though having resided in, the Isle of Man in accordance with the 2009 Regulations.
- (3) The condition in this paragraph is that P resided in the Isle of Man in circumstances where —
  - (a) P was a national of a State which at that time was not an EEA State;
  - (b) P had leave to enter or remain in the Isle of Man under the 1971 Act for the duration of P’s residence; and
  - (c) P would have been residing in the Isle of Man in accordance with these Regulations, had P’s State of origin been an EEA State at that time, and had these Regulations been in force.
- (4) Any period during which P resided in the Isle of Man in circumstances which met the conditions in sub-paragraphs (2) or (3) is not to be taken into account for the purposes of sub-paragraph (1) where that residence was followed by a period of at least two continuous years during which —
  - (a) P was absent from the British Islands; or
  - (b) P’s residence in the Isle of Man —
    - (i) did not meet the conditions in sub-paragraphs (2) or (3); or
    - (ii) was not otherwise in accordance with these Regulations.

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.