

SUBSIDIARY LEGISLATION 217.27

CONDITIONS OF THE ENTRY AND RESIDENCE OF THIRD-COUNTRY NATIONALS FOR THE PURPOSE OF HIGHLY QUALIFIED EMPLOYMENT REGULATIONS

22nd December, 2023

LEGAL NOTICE 303 of 2023.

1. (1) The title of these regulations is the Conditions of the Entry and Residence of Third-Country Nationals for the Purpose of Highly Qualified Employment Regulations. Citation and scope.

(2) The scope of these regulations is to transpose Directive (EU) 2021/1883 of the European Parliament and the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment and repealing Council Directive 2009/50/EC.

(3) These regulations establish:

(a) the conditions of the entry and residence for more than three (3) months in the territory of the Member States, and the rights, of third-country nationals for the purpose of highly qualified employment and of their family members;

(b) the conditions of the entry and residence and the rights, of third-country nationals and of their family members in Member States other than the Member State which first granted an EU Blue Card.

2. For the purpose of these regulations, unless the context otherwise requires: Interpretation.

"Act" means the Immigration Act;

Cap. 217.

"business activity" means a temporary activity directly related to the business interests of the employer and to the professional duties of the EU Blue Card holder based on the work contract in the first Member State, including attending internal or external business meetings, attending conferences or seminars, negotiating business deals, undertaking sales or marketing activities, exploring business opportunities, or attending and receiving training;

"competent authority" means the Identity Malta Agency established by article 3 of the Identity Malta Agency (Establishment) Order;

S.L. 595.07.

"EU Blue Card" means a residence permit bearing the term "EU Blue Card" that entitles its holder to reside and work in the territory of Malta;

S.L. 217.06.

"family members" means third-country nationals as defined in regulation 4(1) of the Family Reunification Regulations;

"first Member State" means the Member State which first grants a third-country national an EU Blue Card;

"gross annual salary" means the average annual gross salary published by the National Statistics Office in the Labour Force Survey;

"higher education qualifications" means any diploma, certificate or other evidence of formal qualifications awarded by higher education institution attesting the successful completion of a post-secondary higher education programme, such as a set of courses provided by an educational establishment recognised by the Malta Qualifications Recognition Information Centre, any other centre which is a member of the ENIC/NARIC networks and as listed by the ENIC/NARIC networks:

Provided that for the purposes of these regulations, a higher education qualification shall be taken into account, on condition that the studies required to acquire it lasted at least three (3) years and referenced to the Malta Qualifications Framework 6 to 8;

"higher professional qualifications" means qualifications attested by evidence of higher education qualifications or higher professional skills;

"higher professional skills" means:

(a) as concerns the occupations listed in the Schedule, knowledge, skills and competences attested by professional experience at a level comparable to higher education qualifications, which are relevant to the profession or sector specified in the work contract or binding job offer, and which have been acquired over the duration set out in the Schedule for each relevant occupation;

(b) as concerns other occupations, only where provided for by law or applicable procedures, knowledge, skills and competences attested by at least

five (5) years of professional experience at a level comparable to higher education qualifications and which are relevant to the profession or sector specified in the work contract or binding job offer;

"highly qualified employment" means the employment of a person who:

(a) is protected as an employee under the Employment and Industrial Relations Act, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of someone else; Cap. 452.

(b) is paid; and

(c) has the required higher professional qualifications;

"international protection" means the international protection awarded in accordance with article 8 of the International Protection Act; Cap. 420.

"International Protection Agency" means the International Protection Agency established by article 3 of the International Protection Agency (Establishment) Order; S.L. 595.36.

"ISCO" means International Standard Classification of Occupations;

"professional experience" means the actual and lawful pursuit of the profession concerned;

"regulated profession" means a professional activity, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications;

"Regulation (EC) No 1030/2002" means Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals;

"Regulation (EC) No 883/2004" means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;

"second Member State" means any Member State in which the EU Blue Card holder intends to exercise or is exercising the right of mobility in accordance with these

regulations, other than the first Member State;

"third-country national" means any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;

"unregulated profession" means a profession that is not a regulated profession.

Applicability.

3. (1) These regulations shall apply to third-country nationals who apply to be admitted, or who have been admitted into the territory of Malta for the purpose of highly qualified employment in accordance with these regulations.

(2) These regulations shall not apply to third-country nationals:

S.L. 420.05.

(a) who seek international protection and are awaiting a decision on their status or who are beneficiaries of temporary protection in accordance with the Temporary Protection for Displaced Persons (Minimum Standards) Regulations;

(b) who seek protection in accordance with Maltese legislation, international obligations or practice of another Member State and are awaiting a decision on their status, or who are beneficiaries of protection in accordance with Maltese legislation, international obligations or practice of another Member State;

S.L. 217.22.

(c) who apply to reside in Malta as researchers in accordance with the Conditions of Entry and Residence of Third Country Nationals for the Purposes of Research, Studies, Training and Voluntary Service in the Mobility Project for Young People: Voluntary Projects Regulations;

S.L. 217.05.

(d) who enjoy European Union long-term resident status in accordance with the Status of Long-term Residents (Third Country Nationals) Regulations and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity;

S.L. 217.21.

(e) who enter Malta for commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons, with the exception of third-country nationals who have been admitted to the territory of Malta as intra-corporate transferees in accordance with the Conditions of Entry and Residence of Third Country Nationals in the Framework of an Intra-Corporate Transfer Regulations;

(f) whose expulsion has been suspended for reasons of fact or law;

(g) who are covered by the Posting of Workers in Malta Regulations for the duration of their posting; or S.L. 452.82.

(h) who under agreements between the European Union and the Member States on the one hand, and third countries on the other as nationals of those third countries, enjoy rights of free movement equivalent to those of European Union citizens.

(3) These regulations shall be without prejudice to the right to issue residence permits other than an EU Blue Card for the purpose of highly qualified employment. Such residence permits shall not confer a right of residence in other Member States as provided in these regulations.

PART I

Criteria for Admission, Refusal and Withdrawal

4. (1) An applicant for an EU Blue Card shall:

Criteria for admission.

(a) present a valid work contract or, as provided in the Employment and Industrial Relations Act, a binding job offer for highly qualified employment for a period of at least six (6) months in Malta:

Cap. 452.

Provided that the monthly or annual salary specified in a valid work contract shall not be less than a relevant salary threshold defined and published for that purpose, which shall be at least one point five (1.5) times the average gross annual salary in Malta:

Provided further that where the Minister responsible for employment, from time to time, determines a particular need of third-country national workers and who belong to the major groups 1 and 2 of ISCO, the salary threshold may be at least one point two (1.2) times the average gross annual salary in Malta:

Provided further that the Minister responsible for employment shall communicate each year to the European Commission the list of professions for which a derogation has been decided.

(b) for unregulated professions, present documents attesting to relevant higher professional qualifications in relation to the work to be carried out;

S.L. 451.03.

(c) for regulated professions, present documents attesting to the fulfilment of the conditions set out in accordance with the law for the exercise by European Union citizens of the regulated profession specified in the work contract or binding job offer, in accordance with the Recognition of Professional Qualifications Regulations;

(d) present a valid travel document, as determined by law, and if required, an application for a visa, a valid visa or, where applicable, a valid residence permit or valid long-stay visa;

(e) provide evidence of having applied for sickness insurance for all risks normally covered for Maltese nationals for periods when no such insurance coverage or corresponding entitlement to benefits is provided for in connection with, or resulting from, the work contract.

(2) Conditions set out in collective agreements or established by practices or in the law in the relevant occupational branches for highly qualified employment shall also be observed.

(3) Where the EU Blue Card issued during the period of three (3) years is renewed, the salary threshold referred to in sub-regulation (1) shall continue to apply if:

(a) the initial period of three (3) years has not elapsed; or

(b) a period of twenty-four (24) months after the issuance of the first EU Blue Card has not elapsed.

(4) Where an application for an EU Blue Card concerns a third-country national who holds a residence permit for the purpose of highly qualified employment issued by the competent authority, the competent authority shall not:

(a) require the applicant to present the documents provided for in paragraph (b) or (c) of sub-regulation (1), if the relevant higher professional qualifications were already verified in the context of the application for the residence permit;

(b) require the applicant to present the evidence provided for in paragraph (e) of sub-regulation (1), unless the application is submitted in the context of a change of employment, in which case regulation 13 shall apply accordingly; and

(c) apply regulation 6(1)(e), unless the application is submitted in the context of a change of employment, in which case regulation 13 shall apply accordingly.

(5) The third-country national concerned shall be required to provide his address in Malta:

Provided that where the third country national concerned does not yet know his future address, the competent authority shall accept a temporary address. In such cases, the third-country national shall provide his permanent address at the latest when the EU Blue Card is issued in accordance with regulation 8.

5. These regulations shall not affect the right of the competent authority after consulting the pertinent entities to determine the volumes of admission of third-country nationals entering Malta, for the purposes of highly qualified employment, in accordance with Malta's labour market requirements.

Volumes of admission.

6. (1) An application for an EU Blue Card shall be rejected for justified reasons:

Grounds for rejecting an application for an EU Blue Card.

(a) where the criteria mentioned in regulation 4 have not been complied with;

(b) where the documents presented have been fraudulently acquired, falsified or tampered with;

(c) where the third-country national concerned is considered to pose a threat to public policy, public security or public health;

(d) where the employer's business was established or operates for the main purpose of facilitating the entry of third-country nationals;

(e) where the competent authority, after evaluating the labour market situation, in the case where there is a high level of unemployment, concludes that the vacancy concerned may be filled from the national or European Union workforce, or by third-country nationals who are lawfully resident in Malta and already form part of its labour market in accordance with European Union or Maltese law, or by European Union long-term residents who wish to move to Malta for highly qualified employment;

(f) where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

S.L. 217.14.

(g) where the employer's business is being, or has been, wound up under national insolvency laws or carries out no economic activity;

(h) where the employer has been sanctioned for the employment of illegally staying third-country nationals in accordance with regulation 7 of the Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations, or where the employment has been pursued in breach of applicable employment legislation including these regulations, or where the employment is undeclared to the competent authorities; or

(i) to ensure ethical recruitment in professions suffering from a lack of qualified workers in the countries of origin, including on the basis of an agreement listing professions for that purpose between the European Union and the Member States on the one hand, and one (1) or more third countries on the other, or between the Member States on the one hand, and one (1) or more third countries on the other.

(2) Without prejudice to sub-regulation (1), any decision to reject an application shall take account of the specific circumstances of the case and shall respect the principle of proportionality.

Grounds for
withdrawing or
refusal to renew an
EU Blue Card.

7. (1) The competent authority shall withdraw or refuse to renew an EU Blue Card where:

(a) the EU Blue Card or the documents presented have been fraudulently acquired, falsified or tampered with;

(b) the third-country national concerned no longer holds a valid work contract for highly qualified employment;

(c) the third-country national concerned no longer holds the qualifications referred to in paragraphs (b) or (c) of regulation 4(1);

(d) the salary of the third-country national concerned no longer meets the salary threshold set out in accordance with regulation 4(1), as applicable;

(e) reasons of public policy, public security or public health exist;

(f) the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(g) the EU Blue Card holder does not have sufficient resources to maintain himself and, where applicable, the members of his family without having recourse to social assistance in accordance with the Social Security Act and the regulations made thereunder;

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(h) the EU Blue Card holder is residing in Malta for purposes other than those for which he was authorised to reside;

(i) the conditions under the applicable law, set out in collective agreements or established by practices in the relevant occupational branches for highly qualified employment are no longer met;

(j) the EU Blue Card holder has not complied with the relevant procedures as provided for in sub-regulations (2)(a), (3) or (4) of regulation 13;

(k) the EU Blue Card holder no longer holds a valid travel document, unless prior to withdrawing the EU Blue Card, a reasonable deadline has been provided for that EU Blue Card holder to obtain and present a valid travel document; or

(l) the EU Blue Card holder fails to comply with the conditions of mobility:

Provided that for the purposes of paragraph (c), the competent authority shall evaluate the sufficiency of resources by reference to their nature and regularity and may take into account the level of minimum national wages, minimum income or minimum pensions as well as the number of family members of the EU Blue Card holder. Such evaluation shall take into account the contributions of the family members to the household income.

(2) By way of derogation from paragraph (f) of sub-regulation (1), a failure to make a communication required by sub-regulations (2)(a), (3) or (4) of regulation 13, shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card, if the EU Blue Card holder proves that the communication did not reach the competent authority for a reason outside his control.

(3) By way of derogation from paragraphs (b) and (d) of sub-regulation (1), the competent authority may decide not to withdraw or not to refuse to renew an EU Blue Card where the EU Blue Card holder temporarily, in any case for not longer than twelve (12) months, does not fulfil the criteria for admission set out in sub-regulation (1)(a), (3) or, where applicable, (4) or (5) of regulation 4, as a result of illness, disability or parental leave.

(4) By way of derogation from paragraphs (b), (d) and (g) of

sub-regulation (1), the EU Blue Card shall not be withdrawn and its renewal shall not be refused in the event of the unemployment of the EU Blue Card holder, except where:

(a) the EU Blue Card holder cumulates a period of unemployment exceeding three (3) months and has held an EU Blue Card for less than two (2) years; or

(b) the EU Blue Card holder cumulates a period of unemployment exceeding six (6) months and has held an EU Blue Card for at least two (2) years.

(5) Where the competent authority intends to withdraw or not to renew an EU Blue Card in accordance with paragraphs (f) or (i) of sub-regulation (1), the competent authority shall notify the EU Blue Card holder in advance and shall set a reasonable deadline of at least three (3) months for the EU Blue Card holder to seek new employment, subject to the conditions set out in sub-regulations (1), (2) and (3) of regulation 13. The period for seeking employment shall be at least six (6) months when the EU Blue Card holder has been previously employed for at least two (2) years.

(6) Without prejudice to sub-regulation (1), in the case of any decision to withdraw or to refuse to renew an EU Blue Card the competent authority shall take account of the specific circumstances of the case and shall respect the principle of proportionality.

PART II

EU Blue Card Procedure

EU Blue Card.

8. (1) Where a third-country national fulfils the criteria set out in regulation 4 and where no grounds for rejection pursuant to regulation 6 apply, he shall be issued with an EU Blue Card. The competent authority shall issue the third-country national with a visa to obtain an EU Blue Card.

(2) The competent authority shall set a standard period of validity for the EU Blue Card, which shall not be less than twenty-four (24) months. If the EU Blue Card holder's work contract covers a shorter period, the EU Blue Card shall be valid for at least the duration of the work contract plus three (3) months, but for not less than the standard period of twenty-four (24) months. However, if the period of validity of the EU Blue Card holder's travel document is shorter than the period of validity of the EU Blue Card that would apply in accordance with this regulation, the EU Blue Card shall be valid at least for the period of validity of the travel document.

(3) (a) The EU Blue Card shall be issued by the

competent authority in accordance with the uniform format laid down in Regulation (EC) No 1030/2002;

(b) the competent authority may indicate on the EU Blue Card the conditions for access to the labour market set out in regulation 13(1). The words "EU Blue Card" shall be entered in the space reserved for the "type of permit" in the residence permit.

(4) Where the competent authority issues an EU Blue Card to a third-country national who has been granted international protection by the International Protection Agency, the competent authority shall enter the following remark in the EU Blue Card issued to that third-country national, under the heading "Remarks": "International protection granted by Malta on [date]". Where Malta withdraws the international protection enjoyed by the EU Blue Card holder, it shall, where appropriate, issue a new EU Blue Card not containing that remark.

(5) Where an EU Blue Card is issued by the competent authority to a third-country national who is a beneficiary of international protection in another Member State, the competent authority issuing the EU Blue Card shall enter the following remark in the EU Blue Card issued to that third-country national, under the heading "Remarks": "International protection granted by [name of the Member State] on [date]":

Provided that before the competent authority enters that remark, it shall notify the Member State that is to be mentioned in that remark that it intends to issue the EU Blue Card and request that Member State to confirm that the EU Blue Card holder is still a beneficiary of international protection:

Provided further that the Member State that is to be mentioned in the remark shall reply not later than one (1) month after receiving the request for information. Where international protection has been withdrawn by a final decision, the competent authority issuing the EU Blue Card shall not enter that remark:

Provided further that where, in accordance with the relevant international instruments or applicable law, the responsibility for the international protection of the EU Blue Card holder was transferred to Malta after it issued an EU Blue Card in accordance with the first proviso, the competent authority shall amend the remark accordingly within three (3) months after the transfer.

(6) Where an EU Blue Card is issued by the competent authority on the basis of higher professional skills in occupations not listed in the Schedule, the competent authority issuing the EU Blue

Card shall enter the following remark in that EU Blue Card, under the heading "Remarks": "[Occupation not listed in the Schedule]".

(7) During the period of its validity, the EU Blue Card shall entitle its holder to:

- (a) enter, re-enter and stay in the territory of Malta; and
- (b) enjoy the rights provided for in these regulations.

Applications for admission.

9. (1) An application for an EU Blue Card shall be submitted by the employer.

(2) An application for an EU Blue Card shall be considered and examined when the third-country national concerned is residing outside Malta, or when he is already residing in Malta as a holder of a valid residence permit or long-stay visa.

(3) By way of derogation from sub-regulation (2), the competent authority may accept an application for an EU Blue Card submitted by the employer of a third-country national who is not in possession of a valid residence permit or long-stay visa but is legally present in Malta.

Procedural safeguards.

10. (1) The competent authority shall adopt a decision on the application for an EU Blue Card and notify the applicant in writing. That decision shall be adopted and notified as soon as possible but not later than ninety (90) days after the date of submission of the complete application.

(2) When the documents presented or information provided in support of the application are inadequate or incomplete, the competent authority shall notify the applicant of the additional documents or information that are required and shall set a reasonable deadline for presenting or providing them. The period referred to in sub-regulation (1), shall be suspended until the authorities have received the additional documents or information required. If the additional documents or information required have not been provided within that deadline, the application shall be rejected.

(3) Any decision to reject an application for an EU Blue Card, to withdraw an EU Blue Card or not to renew an EU Blue Card shall be notified in writing to the third-country national concerned and, where relevant, to his employer. The notification shall specify the reasons for the decision, where he may file an appeal and the competent authority against whom an appeal may be submitted, as well as the time limit for filing an appeal:

Provided that an applicant who feels aggrieved by a decision taken in accordance with the provisions of these regulations

shall have the right to an appeal before the Immigration Appeals Board established by article 25A of the Act and in accordance with the provisions of the said Act:

Provided further that an applicant who lacks sufficient resources to appeal from a decision, shall be entitled to free legal assistance and representation. Free legal assistance and representation shall entail the preparation of the required procedural documents and participation in the hearing before the Immigration Appeals Board.

(4) An applicant shall be allowed to submit an application for the renewal of his EU Blue Card within a period of time not exceeding ninety (90) days prior to the date of expiration of the EU Blue Card.

(5) Where the validity of the EU Blue Card expires during the renewal procedure, the third-country national shall be allowed to stay in Malta as if he was an EU Blue Card holder until the competent authority has taken a decision on the application for renewal.

(6) Where the competent authority issues residence permits for the purpose of highly qualified employment, it shall grant EU Blue Card holders the same procedural safeguards as those provided for under applicable schemes where the procedural safeguards under said applicable schemes are more favourable than those provided for in sub-regulations (1) to (5).

11. When issuing an EU Blue Card, the competent authority shall not require applicants for an EU Blue Card to pay higher fees than those imposed on applicants for national permits.

Fees.

12. (1) Any person who breaches any provision of these regulations, shall be guilty of an offence and shall on conviction, be liable to a fine (*multa*) not exceeding one thousand and five hundred euro (€1,500).

Sanctions against employers.

(2) When the person found guilty of an offence under these regulations is the director, manager, secretary or other principal officer of a body corporate, or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body, and the offence of which that person was found guilty was committed for the benefit, in part or in whole of that body corporate, the said person shall for the purposes of these regulations be deemed to be vested with the legal representation of the same body corporate and shall be liable to a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500).

PART III

Rights

Labour market
access.

13. (1) EU Blue Card holders shall have access to highly qualified employment in Malta under the conditions provided for in this regulation:

Provided that access to employment involving the exercise of public authority and the responsibility for safeguarding the general interest of the State, may be reserved to Maltese nationals, Union Citizens or EEA citizens.

(2) During the first twelve (12) months of legal employment of the person concerned as an EU Blue Card holder, the competent authority in accordance with these regulations shall:

(a) require that a change of employer or a change which may affect the fulfilment of the criteria for admission as set out in regulation 4 be communicated to the competent authority; and

(b) subject any change of employer to a verification of the labour market situation.

(3) The right of the EU Blue Card holder to change employment may be suspended for a maximum of thirty (30) days while the competent authority verifies that the conditions for admission laid down in regulation 4 are fulfilled and that the vacancy concerned could not be filled by the persons listed in regulation 6(1)(e). The competent authority may oppose the change of employment within those thirty (30) days.

(4) After the expiry of the twelve (12)-month period referred to in sub-regulation (2), the competent authority may require only that a change of employer or a change affecting the fulfilment of the criteria for admission as set out in regulation 4, be communicated in accordance with procedures laid down by the applicable law. Such a requirement shall not suspend the right of the EU Blue Card holder to take up and carry out the new employment.

(5) During a period of unemployment, the EU Blue Card holder shall be allowed to seek and take up employment in accordance with this regulation.

(6) The EU Blue Card holder shall communicate the beginning and, where appropriate, the end of the period of unemployment to the competent authority in accordance with the relevant applicable procedures.

(7) Without prejudice to the criteria for admission set out in regulation 4, the competent authority may allow EU Blue Card holders to engage in self-employed activity in parallel to the activity in highly qualified employment in accordance with conditions laid down in the applicable law. This shall not affect the competence of the competent authority for limiting the scope of the authorised self-employed activity:

Provided that any such self-employed activity shall be subsidiary to the main activity of the EU Blue Card holder.

(8) Where the competent authority issues a national residence permit for the purpose of highly qualified employment, the competent authority shall guarantee EU Blue Card holders access to self-employed activities under not less favourable conditions than those provided for under the relevant national scheme.

(9) Without prejudice to the criteria for admission set out in regulation 4, the competent authority may allow EU Blue Card holders to engage in professional activities other than their main activity as an EU Blue Card holder in accordance with conditions laid down in these regulations.

(10) This regulation is without prejudice to the principle of preference for Union citizens where applicable under the relevant Acts of Accession.

14. (1) EU Blue Card holders shall enjoy equal treatment as Maltese nationals as regards: Equal treatment.

(a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace;

(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(c) education and vocational training:

Provided that the competent authority may restrict equal treatment as regards study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training. Access to university and post-secondary education is subject to specific prerequisites in accordance with the applicable law;

(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant applicable procedures;

(e) branches of social security referred to in article 3 of Regulation (EC) No 883/2004; and

(f) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, as well as information and counselling services provided by the authority responsible for employment:

Provided that the competent authority may restrict equal treatment as regards procedures for obtaining housing, without prejudice to the freedom of contract in accordance with European Union law and the Social Security Act and the regulations made thereunder.

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(2) EU Blue Card holders relocate to a third country, or their survivors who reside in a third country and who derive rights from an EU Blue Card holder shall receive in relation to old age, invalidity and death, statutory pensions based on the EU Blue Card holder's previous employment that were acquired in accordance with the legislation referred to in article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as Maltese nationals where such nationals relocate to a third country.

(3) The right to equal treatment laid down in sub-regulation (1) is without prejudice to the right of the competent authority to withdraw or to refuse to renew the EU Blue Card in accordance with regulation 7.

(4) This regulation shall not apply to EU Blue Card holders who are beneficiaries of the right to free movement under Union law in Maltese territory.

(5) This regulation applies to EU Blue Card holders who are beneficiaries of international protection only when they reside in a Member State other than the Member State which granted them international protection.

(6) Where the competent authority issues residence permits for the purpose of highly qualified employment, it shall grant EU Blue Card holders the same equal treatment rights as those granted to holders of residence permits, where such equal treatment rights are more favourable than those provided for in this regulation.

Regulations shall apply, subject to the derogations laid down in this regulation.

(2) By way of derogation from regulation 3(1) and regulation 13 of the Family Reunification Regulations, family reunification shall not be made dependent on the EU Blue Card holder having reasonable prospects of obtaining the right of permanent residence, holding a residence permit for a period of validity of one (1) year or more, or having a minimum period of residence. S.L. 217.06.

(3) By way of derogation from regulations 4(1) and (2) and 14(3) of the Family Reunification Regulations, the integration conditions and measures referred to therein may be applied, but only after the persons concerned have been granted family reunification. S.L. 217.06.

(4) By way of derogation from regulation 9 of the Family Reunification Regulations, where the conditions for family reunification are fulfilled and the complete applications were submitted simultaneously, the decisions on the applications of family members shall be adopted and notified at the same time as the decision on the application for an EU Blue Card. Where the family members join the EU Blue Card holder after the EU Blue Card has been granted and where the conditions for family reunification are fulfilled, the decision shall be adopted and notified as soon as possible but not later than ninety (90) days after the date of submission of the complete application. Sub-regulations (2) and (3) shall apply accordingly. S.L. 217.06.

(5) By way of derogation from regulation 14(2) of the Family Reunification Regulations, the duration of validity of the residence permits of family members shall be the same as that of the EU Blue Card insofar as the period of validity of their travel documents allow it. S.L. 217.06.

(6) By way of derogation from regulation 15(b) of the Family Reunification Regulations, the competent authority shall not apply any time limit in respect of access to the labour market for family members. S.L. 217.06.

(7) By way of derogation from regulation 15 of the Family Reunification Regulations, and without prejudice to the restrictions referred to in regulation 13(8), family members shall have access to any employment, and to self-employed activity in accordance with applicable requirements in accordance with the Employment and Industrial Relations Act and the regulations made thereunder. S.L. 217.06.
Cap. 452.

(8) By way of derogation from regulation 16 of the Family Reunification Regulations, for the purposes of calculation of the duration of residence required for the acquisition of an autonomous residence permit, residence in different Member States shall be cumulated. The competent authority may require two (2) years of legal S.L. 217.06.

and continuous residence in the territory of the Member State where the application for the autonomous residence permit is submitted immediately prior to the submission of the relevant application.

(9) This regulation shall not apply to family members of EU Blue Card holders who are beneficiaries of the right to free movement under Union law in Malta.

(10) This regulation shall apply to family members of EU Blue Card holders who are beneficiaries of international protection only when those EU Blue Card holders reside in a Member State other than the Member State which granted them international protection.

(11) Where the competent authority issues residence permits for the purpose of highly qualified employment, they shall grant EU Blue Card holders and their family members the same rights as those granted to holders of residence permits and their family members where such rights are more favourable than those provided for in this regulation.

European Union
long-term resident
status for EU Blue
Card holders.
S.L. 217.05.

16. (1) The provisions of the Status of Long-term Residents (Third Country Nationals) Regulations shall apply, subject to the derogations laid down in this regulation.

S.L. 217.05.

(2) By way of derogation from regulation 4(1) of the Status of Long-term Residents (Third Country Nationals) Regulations, an EU Blue Card holder who has made use of the possibility provided for in regulation 19, may cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, provided that the EU Blue Card holder has accumulated:

S.L. 217.05.

(a) the number of years of legal and continuous residence required in accordance with regulation 4(1) of the Status of Long-term Residents (Third Country Nationals) Regulations as a holder of an EU Blue Card, a residence permit for highly qualified employment, an authorisation as researcher or, where appropriate, an authorisation as a student in accordance with regulation 4(2) of the Status of Long-term Residents (Third Country Nationals) Regulations or as a beneficiary of international protection within the territory of Malta; and

(b) two (2) years of legal and continuous residence as an EU Blue Card holder within the territory of the Member State where the application for European Union long-term resident status is submitted immediately prior to the submission of the relevant application.

(3) For the purpose of calculating the duration of legal and continuous residence in the European Union referred to in regulation 2(a) and by way of derogation from regulation 4(3) of the Status of Long-term Residents (Third Country Nationals) Regulations, periods of absence from the territory of Malta shall not interrupt the duration of legal and continuous residence in the European Union if those periods of absence are shorter than twelve (12) consecutive months and do not exceed in total eighteen (18) months within that duration.

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(4) By way of derogation from regulation 9(1) of the Status of Long-term Residents (Third Country Nationals) Regulations, the competent authority shall extend to twenty-four (24) consecutive months the period of absence from the territory of the Union during which a European Union long-term resident who holds a long-term residence permit bearing the remark referred to in regulation 16(2) and his family members having been granted EU long-term resident status are allowed to be absent.

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(5) Regulation 14(1)(f), regulation 14(3), regulation 17 and, where applicable, regulations 15 and 20 apply to holders of a long-term residence permit bearing the remark referred to in regulation 17(2).

(6) Where a European Union long-term resident who holds a long-term residence permit bearing the remark referred to in regulation 17(2) exercises his right to relocate to a second Member State pursuant to Part III of the Status of Long-term Residents (Third Country Nationals) Regulations, regulations 13(3) and (4) of those regulations shall not apply. The second Member State may apply measures in accordance with regulation 19(8).

S.L. 217.05.

17. (1) EU Blue Card holders who fulfil the conditions set out in regulation 18 for the acquisition of a European Union long-term resident status shall be issued with a residence permit in accordance with Regulation (EC) No 1030/2002.

Long-term
residence permit.

(2) The competent authority shall indicate the words "Former EU Blue Card holder" in the residence permit referred to in sub-regulation (1) under the heading "remarks".

PART IV

Mobility between Member States

18. (1) Where a third-country national who holds a valid EU Blue Card issued by another Member State that applies the Schengen *acquis* in full enters and stays in Malta for a period of ninety (90) days in any one hundred eighty (180) day period for the purpose of carrying out a business activity, the competent authority shall not require any authorisation for exercising such activity other than the EU

Short-term
mobility.

Blue Card.

(2) A third-country national who holds a valid EU Blue Card issued by another Member State that does not apply the Schengen *acquis* in full, shall be entitled to enter and stay for the purpose of carrying out a business activity in Malta for up to ninety (90) days in any one hundred eighty (180)-day period on the basis of the EU Blue Card and a valid travel document. Where the EU Blue Card holder crosses an internal border for which controls have not yet been lifted into Malta, the competent authority may require the EU Blue Card holder to provide evidence of the business purpose of the stay. The competent authority shall not require any authorisation for exercising the business activity other than the EU Blue Card.

Long-term
mobility.

19. (1) After twelve (12) months of legal residence in the first Member State as an EU Blue Card holder, the third-country national shall be entitled to enter, reside and work in Malta for the purpose of highly qualified employment on the basis of the EU Blue Card and a valid travel document in accordance with the conditions set out in this regulation.

(2) Where the EU Blue Card is issued by another Member State that does not apply the Schengen *acquis* in full, and the EU Blue Card holder crosses, for the purpose of long-term mobility, an internal border for which controls have not yet been lifted into Malta, the competent authority may require the EU Blue Card holder to present the valid EU Blue Card issued by the first Member State and a work contract or a binding job offer for highly qualified employment for a period of at least six (6) months in Malta.

(3) (a) As soon as possible and not later than one (1) month after the EU Blue Card holder has entered the territory of Malta, an application for an EU Blue Card shall be submitted to the competent authority by the employer. That application shall be accompanied by all the documents proving the fulfilment of the conditions referred to in sub-regulation (4).

(b) The EU Blue Card holder shall be allowed to commence work in Malta not later than thirty (30) days after the date of submission of the complete application.

(c) The application may be submitted to the competent authority while the EU Blue Card holder is still residing in the territory of the first Member State.

(4) For the purposes of an application as referred to in sub-regulation (3), the applicant shall present:

(a) the valid EU Blue Card issued by the first

Member State;

(b) a valid work contract or, as provided for in the applicable law, a binding job offer for highly qualified employment for a period of at least six (6) months in Malta;

(c) for regulated professions, documents attesting to the fulfilment of the conditions set in accordance with the applicable law for the exercise by European Union citizens of the regulated profession specified in the work contract or binding job offer are satisfied as provided for in the applicable law;

(d) a valid travel document; and

(e) evidence of meeting the salary threshold in accordance with regulation 4(1).

(5) With regard to paragraph (c) of sub-regulation (3), for the purpose of applying for an EU Blue Card in Malta, EU Blue Card holders shall enjoy equal treatment with European Union citizens as regards recognition of professional qualifications, in accordance with applicable Union and the applicable law:

Provided that for unregulated professions, where the first Member State has issued an EU Blue Card on the basis of higher professional skills for occupations not listed in the Schedule, the applicant may be required to present documents attesting to higher professional qualifications in relation to the work to be carried out, as provided for under the applicable law.

(6) For the purposes of an application as referred to in sub-regulation 3, the competent authority may require the applicant:

(a) for unregulated professions, where the EU Blue Card holder has worked for less than two (2) years in the first Member State, to present documents attesting to higher professional qualifications in relation to the work to be carried out, as provided in the applicable law;

(b) to provide evidence of having, or if provided for by the Social Security Act and the regulations made thereunder, having applied for sickness insurance for all the risks normally covered for Maltese nationals concerned for periods when no such insurance coverage or corresponding entitlement to benefits is provided for in connection with, or resulting from, the work contract.

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(7) The competent authority shall reject an application for an EU Blue Card where:

(a) sub-regulation (4) is not complied with;

(b) the documents presented have been fraudulently acquired, falsified or tampered with;

(c) the employment does not comply with the conditions laid down under the applicable law, set in collective agreements or established by practices as referred to in regulation 4(2); or

(d) the EU Blue Card holder poses a threat to public policy, public security or public health.

(8) In respect of any application procedure for the purpose of long-term mobility, the procedural safeguards set out in regulations 10(2) and (3) shall apply accordingly:

Provided that without prejudice to sub-regulation (4), a decision to reject an application for long-term mobility shall take account of the specific circumstances of the case and shall respect the principle of proportionality.

(9) The competent authority may reject an application for an EU Blue Card on the basis of a verification carried out in accordance with regulation 6(1)(e), only if that Member State carries out such verifications when it is the first Member State.

(10) The competent authority shall adopt either of the following decisions upon an application for an EU Blue Card:

(a) where the conditions for mobility laid down in this regulation are fulfilled, to issue an EU Blue Card and allow the third-country national to reside in Malta for the purpose of highly qualified employment; or

(b) where the conditions for mobility laid down in this regulation are not fulfilled, to reject the application and require the applicant and his family members, in accordance with the procedures provided for in national law, to leave Malta:

Provided that by way of derogation from regulation 9(1), the competent authority shall notify the applicant and the first Member State of its decision in writing as soon as possible, but not later than thirty (30) days after the date of submission of the complete application.

(11) Under exceptional and duly justified circumstances linked to the complexity of the application, the competent authority may extend the deadline referred to in the preceding proviso by thirty

(30) days. It shall inform the applicant of the extension not later than thirty (30) days after the date of submission of the complete application. In its notification to the first Member State, the competent authority shall specify any grounds referred to in paragraphs (b) and (d) of sub-regulation (7), for rejecting the application.

(12) Where the EU Blue Card issued by the first Member State expires during the application procedure, the competent authority may issue a temporary residence permit, or an equivalent authorisation, that allows the applicant to continue to stay legally in Malta until a decision on the application has been taken by the competent authority.

(13) From the second time that an EU Blue Card holder and, where applicable, his family members make use of the possibility of relocating to another Member State under this regulation and regulation 20, "first Member State" shall be understood as meaning the Member State from where the person concerned relocates and "second Member State" shall be understood as meaning the Member State in which he is applying to reside. Notwithstanding sub-regulation (1), an EU Blue Card holder may relocate to another Member State a second time after six (6) months of legal residence in the first Member State as an EU Blue Card holder.

20. (1) Where an EU Blue Card holder moves to Malta in accordance with regulation 19 and where the EU Blue Card holder's family was already constituted in the first Member State, the members of his family shall be entitled to accompany or join the EU Blue Card holder:

Residence in Malta as the second Member State for family members.

Provided that the Family Reunification Regulations and regulation 15 shall apply in the cases referred to in sub-regulation (1), subject to the derogations provided for in sub-regulations (2) to (7):

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Provided further that where the family was not already constituted in the first Member State, regulation 15 shall apply.

(2) By way of derogation from regulation 14(1) of the Family Reunification Regulations, the EU Blue Card holder's family members shall be entitled to enter and stay in Malta on the basis of the valid residence permits obtained in the first Member State as family members of an EU Blue Card holder:

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Provided that where the residence permits of the family members are issued by a Member State that does not apply the Schengen *acquis* in full, and those family members join the EU Blue Card holder when crossing an internal border for which controls have not yet been lifted for the purpose of relocating to Malta, the competent authority may require the family members to present the residence permits they obtained in the first Member State as family

members of the EU Blue Card holder.

S.L. 217.06.

(3) By way of derogation from regulation 8 of the Family Reunification Regulations, not later than one (1) month after entering Malta, the family members concerned or the EU Blue Card holder, shall submit an application for a residence permit as a family member to the competent authority in accordance with these regulations:

Provided that where the residence permit of a family member issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally in Malta, the competent authority shall allow the family member to stay in Malta until a decision on the application has been taken by the competent authority, if necessary by issuing a temporary residence permit or an equivalent authorisation.

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(4) By way of derogation from regulation 6 and regulation 12 of the Family Reunification Regulations, the competent authority shall require the family members concerned to present or provide with their application for a residence permit:

(a) their residence permit in the first Member State and a valid travel document, or certified copies thereof;

(b) evidence that they have resided as members of the family of the EU Blue Card holder in the first Member State;

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(c) documentary evidence as referred to in regulation 12 of the Family Reunification Regulations.

(5) Where the conditions set out in this regulation are fulfilled and the applications were submitted simultaneously, the competent authority shall issue the residence permits for family members at the same time as the EU Blue Card:

Provided that by way of derogation from regulation 15(4), where the conditions set out in this regulation are fulfilled and the family members join the EU Blue Card holder after the EU Blue Card has been granted, residence permits for the family members shall be granted not later than thirty (30) days after the date of submission of the complete application:

Provided further that in duly justified circumstances linked to the complexity of the application, the period of thirty (30) days may be extended by a maximum of another thirty (30) days.

(6) This regulation applies to family members of EU Blue Card holders who are beneficiaries of international protection only when those EU Blue Card holders move to reside in a Member State other than the Member State which granted them international

protection.

(7) This regulation shall not apply to family members of EU Blue Card holders who are beneficiaries of the right to free movement under European Union law in Malta.

21. (1) Notwithstanding regulation 7(1)(a) and regulation 7(1)(e), where an EU Blue Card holder relocates to another Member State in accordance with regulation 19, the first Member State shall not withdraw the EU Blue Card before the second Member State has taken a decision on the application for long-term mobility.

Safeguards in cases of mobility.

(2) Where the second Member State rejects the application for an EU Blue Card in accordance with regulation 19(10)(b), the first Member State shall, at the request of the second Member State, allow the re-entry of the EU Blue Card holder and, where applicable, of his family members, without formalities and without delay. This shall also apply if the EU Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application.

(3) The EU Blue Card holder or the employer in the second Member State may be held liable for the costs related to the re-entry of the EU Blue Card holder and of his family members as referred to in sub-regulation (2).

(4) Where a Member State withdraws or does not renew an EU Blue Card which bears the remark referred to in regulation 8(5) and decides to expel the third-country national, it shall request the Member State indicated in that remark to confirm that the person concerned is still a beneficiary of international protection in that Member State. The Member State indicated in that remark shall reply within one (1) month after receiving the request for information.

(5) Where the third-country national is still a beneficiary of international protection in the Member State indicated in that remark, that person shall be expelled to that Member State which shall, without prejudice to the applicable European Union or national law and to the principle of family unity, immediately allow the re-entry without formalities, of that person and his family members.

(6) By way of derogation from the sub-regulation (5), the Member State which adopted the expulsion decision shall retain the right to remove the third-country national, in accordance with its international obligations, to a country other than the Member State which granted international protection, where the conditions specified in article 14(2) of the International Protection Act are fulfilled with respect to that third-country national.

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(7) Where an EU Blue Card holder or his family members cross the external border of a Member State that applies the Schengen

acquis in full, that Member State shall consult the Schengen Information System in accordance with Regulation (EU) 2016/399. That Member State shall refuse entry for persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen Information System.

Access to
information and
monitoring.

22. (1) The competent authority shall make easily accessible to applicants for an EU Blue Card information on the documentary evidence needed for an application, as well as information on entry and residence conditions applicable to third-country nationals falling under the scope of these regulations and to their family members, including their rights and obligations and the procedural safeguards. That information shall include information on the salary thresholds set in accordance with the applicable law.

(2) That information shall also include information on:

(a) business activities in the territory of Malta in which an EU Blue Card holder from another Member State as referred to in regulation 21 is allowed to engage; and

(b) the procedures applicable to obtaining an EU Blue Card and residence permits for family members in a second Member State, in accordance with these regulations.

SCHEDULE

List of occupations referred to in these regulations

Information and communications technology managers and professionals who have acquired at least three (3) years of relevant professional experience within seven (7) years prior to the application for an EU Blue Card belonging to the following groups of the ISCO-08 classification:

(1) 133 Information and Communications Technology Services Managers;

(2) 25 Information and Communications Technology Professionals.
