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L.N. 107 of 2012

EUROPEAN UNION ACT
(CAP. 460)
Free Movement of European Union Nationals and their Family Members (Amendment) Order, 2012

Citation.

S.L.460.17.

1. (1) The title of this Order is the Free Movement of European Union Nationals and their Family Members (Amendment) Order, 2012, and shall be read and construed as one with the Free Movement of European Union Nationals and their Family Members Order, hereinafter referred to as "the principal order".

Scope and applicability. S.L.460.17.

(2) The purpose of this order is to amend the Free Movement of European Union Nationals and their Family Members Order so as to further implement the provisions of Directive 2004/38/EC of the European Parliament and of the Council of the 29 April 2004.

Amendment of article 1 of the principal order.

2. Article 1(3) of the principal order shall be substituted by the following:

"(3) This Order implements, *inter alia*, the provisions of Directive 2004/38/EC of the European Parliament and of the Council of the 29 April 2004.".

Amendment of article 2 of the principal order.

3. Article 2 of the principal order shall be amended as follows:

(a) immediately after the definition of "employment agency" there shall be added the following new definition:

" "exclusion from Malta" means a restriction on the right of entry or residence or a removal order which has been enforced;";

(b) the definition of "Member State" shall be substituted by the following:

" "Member State" means a Member State of the European Union (other than Malta) and a state of the European Economic Area:

Provided that a State of the European Economic Area means Norway, Iceland and Liechtenstein;";

(c) the definition of "the Treaty" shall be substituted by the following:

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" "Treaty" means the Treaty on the Functioning of the European Union;" and

(d) the definition of "worker" shall be substituted by the following:

" "worker" means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union.".

Amendment of article 3 of the principal order.

4. Article 3 of the principal order shall be amended as follows:

(a) sub-article (4) thereof shall be substituted by the following:

"(4) The period of three months referred to in sub-article (3) is extendable to a six-month period, in the case of a person who is seeking employment."; and

(b) sub-article (6) thereof shall be substituted by the following:

"(3) A Union citizen or a person referred to in paragraph (1), who arrives in Malta and who is not covered by the provisions of article 31 of the Act applicable to places of accommodation for reward shall, within one month of his arrival, report his presence in Malta to the Principal Immigration Officer by reporting at any office designated by the Principal Immigration Officer, and shall be issued with an acknowledgement in writing of such report.".

Amendment of article 4 of the principal order.

5. Immediately after article 4(3) of the principal order there shall be added the following new sub-article:

"(4) In specific cases where there is a reasonable doubt as to whether the persons mentioned in the preceding sub-articles satisfy the conditions stated therein, the Director may verify if these conditions are fulfilled:

Provided that this verification shall not be carried out systematically.".

Amendment of article 8 of the principal order.

6. Article 8 shall be amended as follows:

(a) the provisos to sub-article (1) thereof shall be deleted;

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(b) sub-article (2) thereof shall be substituted by the following:

"(2) The Minister responsible for employment may, by Order restrict the labour market, entirely or partially, for nationals of Member States in line with the arrangements stipulated in the Treaties of Accession to the European Union that may be applicable during a specified period of time."; and

(c) subarticle 7(a)(ii) thereof shall be substituted by the following:

"(ii) with a confirmation of engagement from the employer or a certificate of employment;".

Amendment of article 9 of the principal order.

7. The words "article 3(7)" in article 9(3) of the principal order shall be substituted by the words "article 3(5)".

Amendment of article 10 of the principal order.

8. Article 10(5)(b)(iv) shall be substituted by the following:

"(iv) the provisions of article 8(7)(b)(ii) to (vi) relating to the issue of a registration certificate or a residence card, as applicable, shall apply *mutatis mutandis* in respect of family members and other family members of the Union citizen who is a student.".

Amendment of article 13 of the principal order.

9. The second proviso to article 13(1) of the principal order shall be substituted by the following:

"Provided further that without prejudice to the provisions of this Order, a removal order shall not be issued in the case of a person who is a worker, or a self-employed, or a job-seeker, who can provide evidence that he is continuing to seek employment and that he has a genuine chance of being engaged, or the family members of such persons.".

Amendment of article 14 of the principal order.

10. Article 14 of the principal order shall be amended as follows:

(a) in sub-article (1) thereof, the words "interests of the security of Malta." shall be substituted by the words "interests of the security of Malta:" and immediately thereafter there shall be added the following new proviso:

"Provided that, where applicable, the said person shall be informed of the time allowed to leave Malta except in duly substantiated cases of urgency, the time

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allowed to leave Malta shall not be less than one month from the date of notification.";

(b) sub- article 2 thereof shall be substituted with the following new sub-article:

"(2) The Director shall inform the person referred to in sub-article (1), in writing, of such person's right to lodge an appeal to the Board and the time limit for the appeal and the Board shall allow for an examination of the legality of a removal decision, as well as of the facts and circumstances on which the proposed measure is based, ensuring that the decision is not disproportionate, particularly in view of the requirements laid down in article 13.";

(c) sub-articles (3), (4), (5) and (6) shall be renumbered as (5), (6), (7) and (8) respectively;

(d) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

" (3) Where the application for appeal against a removal order is accompanied by an application for an interim order to suspend enforcement of that order, actual removal from Malta may not take place 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; or

(b) where the person concerned has had previous access to judicial review; or

(c) where the removal decision is based on imperative grounds of public security under article 13(4).

(4) The competent authorities may exclude the person concerned from its territory pending the redress procedure, but such person may not be prevented from submitting his defence in person, except when his appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory."; and

(e) sub-article (5), as renumbered, shall be substituted by the following new sub-article:

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"(5) A person, who is removed from Malta or whose free movement has been restricted in accordance with this Order, on grounds of public policy or public security, may submit to the Principal Immigration Officer an application in writing for the lifting of his exclusion from Malta after a reasonable period, depending on the circumstances and in any event after the lapse of three years from the enforcement of the final exclusion from Malta and put forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering the said exclusion and the Principal Immigration Officer, in consultation with the Director shall reach a decision on the application within six months of its submission and such person shall have no right of entry into Malta pending the consideration of his application.".

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