L.N. 63 of 2019

IMMIGRATION ACT
(Cap. 217)

Immigration Status of British Citizens Resident in Malta on the Withdrawal Date of the United Kingdom from The European Union Regulations, 2019

IN EXERCISE of the powers conferred by article 36 of the Immigration Act, the Minister responsible for Immigration, has made the following regulations:-

PART I
Preliminary

Title and commencement.

1. (1) The title of these regulations is The Immigration Status of British Citizens Resident in Malta on the Withdrawal Date of the United Kingdom from the European Union Regulations, 2019.

(2) These regulations shall come into force on the day following that on which the Treaties of the European Union shall cease to apply to the United Kingdom unless a Withdrawal Agreement concluded between the European Union and the United Kingdom has entered into force by that date.

Interpretation.

In these regulations, unless the context otherwise requires:

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"the Act" means the Immigration Act;

"Board" means the Immigration Appeals Board constituted by article 25A of the Act;

"British Citizen" means a person who holds British Nationality under the British Nationality Act excluding those holding the following British nationality status:

(i) British nationals (Overseas);

(ii) British overseas territories citizens (BOTC);

(iii) British overseas citizens (BOC);

(iv) British protected persons (BPP);

(v) British subjects (BS);

"Chief Executive Officer" means the Officer referred to in regulation 9 of the Identity Malta Agency (Establishment) Order; S.L. 595.07

"employment licence" means such employment licence as may be required for the holder to engage as an employed person or to carry out some other economic activity in Malta as provided for in article 11(3) of the Act;

"family member" means a family member or other family member as defined in article 2 of the Free Movement of European Union Nationals and their Family Members Order; S.L.460.17

"Identity Malta Agency" means the entity established by the Identity Malta Agency (Establishment) Order; S.L. 595.07

"national minimum wage" means the wage published by means of a National Minimum Wage National Standard Order under the Employment and Industrial Relations Act; Cap. 452

"partner" means a partner as referred to in article 3(1) of the Free Movement of European Union Nationals and their Family Members Order; S.L.460.17

"Principal Immigration Officer" means the person appointed to such Office by the Act;

"Residence permit" means a permit issued in the format of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals, to British citizens under regulation 6;

"Withdrawal date" means the day on which the Treaties of the European Union shall cease to apply to the United Kingdom.

PART II
Residence Rights

Right to reside in Malta

3. (1) A British citizen who, on the withdrawal date, was resident in Malta and was in Malta prior to the said date after having satisfied the requirements stipulated in the provisions of the Free Movement of European Union Nationals and Their Family Members Order, shall be entitled to continue to reside in Malta and enjoy the right of free movement into and from Malta in accordance with the provisions of these regulations: S.L. 460.17

Provided that such British citizen has enough funds to maintain himself in Malta, which funds shall be equivalent to the national minimum wage in Malta, and that he has sickness insurance.

S.L. 123.79

(2) A British citizen who holds a valid Certificate under the Residents Scheme Regulations shall also be entitled to the status under these regulations provided that he relinquishes the said Certificate and submits an application under these regulations within 2 years from the withdrawal date:

Provided that where such British citizen opts for the status under these regulations, the Residence Documentation held by such British citizen on the basis of the Residents Scheme Regulations shall continue to be valid until the Residence Permit under these regulations is issued.

Right of family member or partner to reside in Malta

4. The family member or partner of the British citizen referred to in regulation 3 shall enjoy such right of residence even if the said family member or partner was not residing in Malta on the withdrawal date:

Provided that, with the exception of a child born to or adopted by the said British citizen, his family member or partner shall not enjoy such right of residence if the relationship or partnership is established subsequent to the withdrawal date:

Provided further that, in the case of divorce, separation or death of the British citizen, where this had occurred prior to the withdrawal date and where such family member had continued to enjoy the right of residence in accordance with the provisions of the

S.L. 460.17.

Free Movement of European Union Nationals and Their Family Members Order, such family member shall continue to enjoy such right of residence exclusively in his own respect.

Validity period of status.

5. (1) A beneficiary of these regulations shall enjoy the status provided by these regulations for a period of ten years from the withdrawal date.

(2) This status shall be renewed upon application provided that the conditions of these regulations continue to be satisfied

Procedure for obtaining Residence Permit.

6. Upon the submission of the relative application and documentation as determined by the Chief Executive Officer, showing that the applicant meets the conditions set out in these regulations, the Chief Executive Officer shall issue him with a residence permit free of charge to reflect his status under these regulations:

Provided that, before issuing such residence permit, the Chief Executive Officer shall refer the application to the Principal Immigration Officer in order to ensure that there are no grounds to consider the applicant’s residence in Malta to be contrary to the public interest.

7. The Residence Documentation previously issued to a person who would qualify for such status on the basis of his right of free movement prior to the withdrawal date, shall be deemed to be valid until the residence permit referred to in regulation 6 is issued in his respect. Temporary validity of Residence Documentation.

PART III
Related Rights

8. A beneficiary of these regulations shall be entitled to: Rights.

(a) without prejudice to any specific legislation applicable to the regulated professions and without prejudice to the Nationality Requirements for Appointments in Public Administration Regulations and any regulations made thereunder, take up any employment or self-employed activities in Malta and shall not require an employment licence for that purpose; S.L. 595.03

(b) access to:

(i) healthcare in the same way as prior to the withdrawal date, if he is a worker or student, or his family member;

(ii) healthcare entitlements applicable to him prior to the withdrawal date, if on this date he has in his possession a certificate of entitlement under the S1 scheme;

(iii) healthcare entitlements, applicable to them prior to the withdrawal date, if they are economically self-sufficient and do not fall to be considered under the previous sub-paragraphs (i) and (ii);

(c) access to education in the same way as EU nationals exercising their right to free movement in Malta in accordance with the Free Movement of European Union Nationals and their Family Members Order: S.L. 460.17

Provided that a beneficiary of these regulations shall be entitled to study and maintenance grants and loans only if he has resided in Malta for 5 years;

(d) equal treatment with Maltese nationals with regard to recognition of diplomas, certificates and professional qualifications in accordance with Maltese legislation, provided that an application for such recognition has been submitted prior to the withdrawal date;

(e) equal treatment with Maltese nationals as regards access to goods and services and the supply of goods and services made available to the public, unless provided otherwise by these regulations or any other legislation;

(f) social benefits including housing benefits, in the same way as EU nationals exercising their right of free movement in Malta in accordance with the Free Movement of European Union Nationals and their Family Members Order:

S.L. 460.17

Provided that he does not become a burden on the Maltese social assistance system;

(g) exchange his driving licence issued by the competent authority in the United Kingdom into a driving licence issued by the competent authority in Malta, as provided for in the Motor Vehicles (Driving Licences) Regulations, without the need to undergo the test referred to in regulation 16 thereof.

S.L. 65.18.

PART IV
Cessation of Rights and Appeals

Cessation of rights.

9. The entitlement to the status under these regulations shall cease if:

(a) the beneficiary of these regulations absents himself from Malta for a continuous period of two years:

Provided that continuity of residence shall not be affected by:

(i) temporary absences not exceeding a total of six months in each year; or

(ii) absences of a longer duration for compulsory military service; or

(iii) one absence of a maximum of twelve consecutive months for important reasons including pregnancy and childbirth, serious illness, study or vocational training, or a posting outside Malta; or

(b) it is contrary to the public interest or public security that the beneficiary should enjoy or continue to enjoy such status; or

(c) the beneficiary, after the withdrawal date, has been found guilty of an offence and sentenced to imprisonment for

one year or more, in Malta or abroad; or

(d) the beneficiary no longer has enough funds to maintain himself in Malta, which funds shall be equivalent to the national minimum wage in Malta; or he no longer has sickness insurance, or he becomes a burden on the Maltese social assistance system, without prejudice to regulation 9; or

(e) the beneficiary does not submit an application for a residence permit as provided for in regulation 6 within 2 years from the withdrawal date; or

(f) such entitlement was obtained by means of fraud, false representation or the concealment of any material fact; or

(g) the beneficiary is the spouse or registered partner, who is a third country national and who, following the withdrawal date, separates or divorces from the British citizen from whom he has derived such status, during the three year period following the date of marriage or registration of partnership; or

(h) the beneficiary is the de facto partner, who is a third country national and whose relationship with the British citizen from whom he has derived such status no longer subsists; or

(i) the beneficiary is a third country national family member or partner of the person mentioned in paragraph (d), or a third country national family member of the person mentioned in paragraphs (g) and (h).

Remedy.

10. (1) The Chief Executive Officer shall inform the person:

(a) who is being divested of the status conferred by these regulations; or

(b) whose application to be issued with a residence permit which reflects such status has been refused,

of his decision and the grounds for such decision, in writing, in a way that is comprehensible to such person, unless this is contrary to the interests of the security of Malta.

(2) A person who is divested of the status conferred by these regulations, and has been informed pursuant to sub-regulation (1), shall have the right to lodge an appeal to the Board.

(3) The Chief Executive Officer shall inform the person

referred to in sub-regulation(1) in writing, of such person's right to lodge an appeal to the Board and the time limit for the appeal.

Voluntary departure.

11. A person who is divested of the status conferred by these regulations shall be notified of the time allowed to leave Malta, which shall not be less than one month from the date of notification, except in duly substantiated cases of urgency.

Removal.

12. Where it is necessary for a person referred to in regulation 10 to be removed from Malta, the provisions of article 14 of the Act and any regulations made thereunder shall apply.

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