

**STATUTORY INSTRUMENT**

**S.I. No. 656 of 2006**

**European Communities (Free Movement of Persons) (No. 2) Regulations 2006**

Published by the Stationery Office, Dublin

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**Price: €3.05**

**Prn. A6/2187**

## **S.I. No. 656 of 2006**

### **European Communities (Free Movement of Persons) ( No. 2) Regulations 2006**

I, Michael McDowell, Minister for Justice, Equality and Law Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purposes of giving effect to Directive 2004/38/EC<sup>1</sup> of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, hereby make the following Regulations:

#### **Citation and Commencement**

1. These Regulations may be cited as the European Communities (Free Movement of Persons) ( No. 2) Regulations 2006.
2. These Regulations come into operation on 1 January 2007.

#### **Interpretation**

2. (1) In these Regulations -

“Council Directive” means Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended from time to time;

“exclusion order” means an order under Regulation 23(1);

“family member” includes a qualifying family member and a permitted family member;

“Irish visa” has the meaning assigned to it by the Immigration Act 2003 (No. 26 of 2003);

“Member State” means a Member State of the European Union other than the State;

“Member State of the EEA” means a state which is a contracting state to the EEA Agreement;

“Minister” means the Minister for Justice, Equality and Law Reform;

“non-national” has the meaning assigned to it by the Immigration Act 1999 (No. 22 of 1999);

“permanent residence card” means a permanent residence card issued under Regulation 16(3);

“permanent residence certificate” means a permanent residence certificate issued under Regulation 15(3);

“permitted family member”, in relation to a Union citizen, means any family member, irrespective of his or her nationality, who is not a qualifying family member of the Union citizen, and who, in his or her country of origin, habitual residence or previous residence -

(a) is a dependant of the Union citizen,

(b) is a member of the household of the Union citizen,

(c) on the basis of serious health grounds strictly requires the personal care of the Union citizen, or

(d) is the partner with whom the Union citizen has a durable relationship, duly attested;

“qualifying family member”, in relation to a Union citizen, means -

(a) the Union citizen’s spouse,

(b) a direct descendant of the Union citizen who is -

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<sup>1</sup> OJL 229 of 29.6.2004, p.35

- (i) under the age of 21, or
- (ii) a dependant of the Union citizen,
- (c) a direct descendant of the spouse of the Union citizen who is -
  - (i) under the age of 21, or
  - (ii) a dependant of the spouse of the Union citizen,
- (d) a dependent direct relative of the Union citizen in the ascending line, or
- (e) a dependent direct relative of the spouse of the Union citizen in the ascending line;

“registration district” means the Dublin Metropolitan Area or a Garda Síochána District situated outside that Area;

“registration officer” means the officer in charge of the Garda National Immigration Bureau in the Dublin Metropolitan Area or the Superintendent of the Garda Síochána in a Garda Síochána District outside that Area;

“removal order” means an order under Regulation 20(1)(a);

“residence card” means a residence card issued under Regulation 7(2);

“spouse” does not include a party to a marriage of convenience;

“Union citizen” means any person having the nationality of a Member State.

(2) A word or expression that is used in these Regulations and is also used in the Council Directive shall have in these Regulations the same meaning as it has in the Council Directive unless the contrary intention appears.

(3) For the purposes of these Regulations, a person shall be regarded as not having sufficient resources to support himself or herself and his or her dependants where he or she would qualify for assistance under Part 3 of the Social Welfare Consolidation Act 2005 (No. 26 of 2005) if a claim were made by or on behalf of the person.

### **Application and transitional provisions**

3. (1) These Regulations shall apply to -

- (a) Union citizens,
- (b) subject to paragraph (2), qualifying family members of Union citizens who are not themselves Union citizens, and
- (c) subject to paragraph (2), permitted family members of Union citizens.

(2) These Regulations shall not apply to a family member unless the family member is lawfully resident in another Member State and is -

- (a) seeking to enter the State in the company of a Union citizen in respect of whom he or she is a family member, or
- (b) seeking to join a Union citizen, in respect of whom he or she is a family member, who is lawfully present in the State.

(3) The European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977) and the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997) shall apply to citizens of Member States of the EEA other than Union citizens.

(4) (a) A person lawfully resident in the State in accordance with the provisions of the European Communities (Aliens) Regulations 1977, the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 or the European Communities (Free Movement of Persons) Regulations 2006 shall be deemed to be lawfully resident in the State for the purposes of these Regulations.

- (b) Nothing in these Regulations shall affect the validity of a residence permit or residence document issued under the European Communities (Aliens) Regulations 1977, the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997, or a residence card, permanent residence certificate or card issued under the European Communities (Free Movement of Persons) Regulations 2006.

#### **Permission for Union citizens and qualifying family members to enter the State**

4. (1) A Union citizen who is in possession of a valid national identity card or passport as evidence of his or her nationality and identity may not be refused permission to enter the State unless -

- (a) he or she is suffering from a disease specified in Schedule 1, or
- (b) his or her personal conduct has been such that it would be contrary to public policy or would endanger public security to grant him or her permission to enter the State.

(2) A qualifying family member of a Union citizen who is not a national of a Member State and who is in possession of a valid passport as evidence of his or her nationality and identity may not be refused permission to enter the State unless -

- (a) he or she is suffering from a disease specified in Schedule 1, or
- (b) his or her personal conduct has been such that it would be contrary to public policy or would endanger public security to grant him or her permission to enter the State.

(3) (a) A qualifying family member, who is a member of a class of non-nationals not specified in an order made under section 17 of the Immigration Act 2004 (No. 1 of 2004) as not requiring an Irish visa, shall be in possession of a valid Irish visa as a condition to being granted permission to enter the State.

- (b) The Minister shall, on the basis of an accelerated process, consider an application for an Irish visa from a qualifying family member referred to in subparagraph (a) as soon as possible and if the Minister decides to issue an Irish visa that visa shall be issued free of charge.

(4) An immigration officer shall not, at the point of entry, place a stamp in the passport of a qualifying family member who presents to the officer a valid residence card.

(5) (a) Where a Union citizen, or a family member who is not a national of a Member State, does not have a valid national identity card or passport or, if required, the necessary Irish visa, the immigration officer may, subject to subparagraph (b), refuse permission to enter the State to that person.

- (b) Before refusing permission to enter the State under subparagraph (a), the immigration officer shall give the person concerned every reasonable opportunity to -

- (i) obtain the necessary documents,
- (ii) present the necessary documents to the immigration officer within a reasonable period of time, or
- (iii) corroborate or prove by other means that he or she is entitled to enter the State in accordance with these Regulations.

#### **Permission for permitted family members of Union citizens to enter the State**

5. (1) A person who wishes to enter the State on the basis that he or she is a permitted family member of a Union citizen may be required to produce to the Minister -

- (a) (i) where the person is a Union citizen, a valid passport or national identity card, or
- (ii) where the person is not a national of a Member State, a valid passport,
- (b) documentary evidence from the relevant authority in the country of origin or country from which he or she is arriving certifying that he or she is a dependant, or a member of the household, of the Union citizen,

(c) documentary evidence of the existence of serious health grounds which strictly require the personal care of the applicant by the Union citizen, or

(d) documentary evidence of the existence of a durable relationship with the Union citizen.

(2) Upon receipt of the evidence referred to in paragraph (1), the Minister shall cause to be carried out an extensive examination of the personal circumstances of the person concerned in order to establish whether he or she is a permitted family member.

(3) A permitted family member, who is a member of a class of non-nationals not specified in an order made under section 17 of the Immigration Act 2004 as not requiring an Irish visa, shall be in possession of a valid Irish visa as a condition to being granted permission to enter the State.

(4) Without prejudice to any rights or entitlements which a permitted family member may have, on an individual basis, under these Regulations, a permitted family member may not be refused permission to enter the State unless -

(a) following the examination referred to in paragraph (2), the Minister is not satisfied that the person concerned is a permitted family member,

(b) he or she is suffering from a disease specified in Schedule 1, or

(c) his or her personal conduct has been such that it would be contrary to public policy or would endanger public security to grant him or her permission to enter the State.

(5) Where the Minister refuses permission to enter the State pursuant to paragraph (4), he or she shall notify the person concerned of the reasons for such refusal.

### **Residence in the State**

6. (1) Subject to Regulation 20, a person to whom these Regulations apply may reside in the State for up to 3 months on condition that he or she -

(a) (i) where the person is a Union citizen, holds a valid national identity card or passport,

(ii) where the person is not a Union citizen, holds a valid passport, and

(b) does not become an unreasonable burden on the social welfare system of the State.

(2) (a) Subject to Regulation 20, a Union citizen may reside in the State for a period longer than 3 months if he or she -

(i) is in employment or is self-employed in the State,

(ii) has sufficient resources to support himself or herself, his or her spouse and any accompanying dependants, and has comprehensive sickness insurance in respect of himself or herself, his or her spouse and any accompanying dependants,

(iii) is enrolled in an educational establishment in the State for the principal purpose of following a course of study there, including a vocational training course, and has comprehensive sickness insurance in respect of himself or herself, his or her spouse and any accompanying dependants, or

(iv) subject to paragraph (3), is a family member accompanying or joining a Union citizen who satisfies one or more of the conditions referred to in clause (i), (ii) or (iii).

(b) Subject to paragraph (3), a family member of a Union citizen who is not a national of a Member State shall be entitled to reside in the State for more than 3 months where the Minister is satisfied that the Union citizen concerned satisfies one or more of the conditions referred to in subparagraph (a)(i), (ii) or (iii).

(c) Subject to Regulation 20, a person to whom subparagraph (a)(i) applies may remain in the State on cessation of the activity referred to in that subparagraph if -

(i) he or she is temporarily unable to work as the result of an illness or accident,

- (ii) he or she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with a relevant office of the Department of Social and Family Affairs and FÁS,
  - (iii) subject to subparagraph (d), he or she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first year and has registered as a job-seeker with a relevant office of the Department of Social and Family Affairs and FÁS, or
  - (iv) except where he or she is involuntarily unemployed, he or she takes up vocational training related to the previous employment.
- (d) In a case to which subparagraph (c)(iii) applies, the right to remain referred to in paragraph (c) shall expire 6 months after the cessation of the activity concerned unless the person concerned enters into employment within that period.
- (3) (a) Paragraph (2)(a)(iv) and (2)(b) shall operate to allow only a qualifying family member of a Union citizen to whom paragraph (2)(a)(iii) applies to remain in the State.
- (b) Without prejudice to subparagraph (a), the Minister may, following an extensive examination of the personal circumstances of the person concerned, permit a permitted family member of a Union citizen to remain in the State.
- (c) Where the Minister does not permit a person to remain in the State pursuant to subparagraph (b), he or she shall notify the person of the reasons for the decision.

**Registration of family members of Union citizen who are not nationals of Member State**

7. (1) (a) A family member of a Union citizen who is not a national of a Member State and who has been resident in the State for not less than 3 months shall apply to the Minister for a residence card.
- (b) An application made under subparagraph (a) shall contain the particulars set out in Schedule 2 and be accompanied by such documentary evidence as may be necessary to support the application.
- (c) The Minister shall immediately cause to be issued a notice acknowledging receipt of an application made under subparagraph (a).
- (2) Where the Minister is satisfied that it is appropriate to do so, he or she shall, within 6 months of the date of receiving an application made under paragraph (1)(a), cause to be issued a residence card containing the particulars set out in Schedule 3 in respect of the family member concerned.
- (3) Subject to Regulation 20, a person the subject of an application made under paragraph (1)(a) may remain in the State pending a decision on the application.

**Validity of residence card**

8. (1) Subject to Regulation 20, the period of validity of a residence card shall be equivalent to the envisaged period of residence in the State of the Union citizen of whom the recipient of the card is a family member, or not less than 5 years from the date of issue of the card, whichever is the lesser period.
- (2) The validity of a residence card shall not be affected by temporary absences of the card holder not exceeding 6 months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

**Retention of the right of residence by family member of Union citizen in the event of death or departure from the State of Union citizen**

9. (1) (a) Subject to subparagraph (b), a family member of a Union citizen who is a national of a Member State may retain a right of residence in the State on an individual and personal basis in the event of the death or departure from the State of the Union citizen.
- (b) Before acquiring an entitlement to permanent residence under Regulation 12, a family member referred to in subparagraph (a) must satisfy one or more of the conditions referred to in Regulation 6(2)(a)(i) to (iv).
- (2) (a) Subject to subparagraph (b), upon the death of a Union citizen, a family member of the Union citizen who is not a national of a Member State may, where he or she has been residing in the State as a family member of the Union citizen for at least one year before the death, continue to reside in the State on an individual and personal basis.
- (b) Subparagraph (a) shall not apply to a family member unless the Minister is satisfied that the family member -
- (i) is in employment or is self-employed in the State, or
- (ii) has sufficient resources to support himself or herself and any accompanying dependants, and comprehensive sickness insurance in respect of himself or herself and any accompanying dependants.
- (3) Where a Union citizen has died or has left the State and his or her children, being resident in the State, are enrolled in an educational establishment in the State for the principal purpose of following a course of study there, including a vocational training course, then the parent who has actual custody of the children, irrespective of nationality, and the children shall be entitled to reside in the State until the completion of the course of study.

**Retention of the right of residence by family members in the event of divorce, annulment of marriage**

10. (1) (a) Subject to subparagraph (b), a family member of a Union citizen who is a national of a Member State may retain a right of residence in the State on an individual and personal basis in the event of the Union citizen's divorce or annulment of his or her marriage.
- (b) Before acquiring an entitlement to permanent residence under Regulation 12, a family member referred to in subparagraph (a) must satisfy one or more of the conditions referred to in Regulation 6(2)(a)(i) to (iv).
- (2) (a) Subject to subparagraph (b), a family member of a Union citizen who is not a national of a Member State may retain a right of residence in the State on an individual and personal basis in the event of the Union citizen's divorce or annulment of his or her marriage.
- (b) Subject to subparagraph (c), a right of residence referred to in subparagraph (a) shall only be retained where the Minister is satisfied that -
- (i) prior to initiation of the divorce or annulment proceedings, the marriage had lasted at least 3 years, including one year in the State,
- (ii) by agreement between the spouses, or by court order, the spouse who is not a national of a Member State has custody of the Union citizen's children,
- (iii) the retention of such right of residence is warranted by particularly difficult circumstances, such as the spouse having been a victim of domestic violence while the marriage was subsisting, or
- (iv) by agreement between the spouses, or by court order, the spouse who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the State, and for as long as is required.

- (c) Before acquiring an entitlement to permanent residence under Regulation 12, a family member referred to in subparagraph (a) must satisfy the Minister that he or she -
- (i) is in employment or is self-employed in the State,
  - (ii) has sufficient resources to support himself or herself and any accompanying dependants, and has comprehensive sickness insurance in respect to himself or herself and any accompanying dependants, or
  - (iii) is a member of the family, constituted in the State, of a person who satisfies the conditions referred to in clause (i) or (ii).

### **Rights of residence**

11. (1) A person residing in the State under Regulation 6(2), 9 or 10 shall be entitled to continue to reside in the State for as long as he or she satisfies that Regulation.

(2) It shall be for the person referred to in paragraph (1) to satisfy the Minister that he or she satisfies Regulation 6(2), 9 or 10.

(3) Without prejudice to Regulations 6(2), 9 and 10, a family member of a Union citizen shall cease to have any entitlements under these Regulations if the Union citizen on whom he or she is dependant-

- (a) is refused leave to land, or
- (b) is required to leave the State.

(4) Within 7 days of any change in his or her place of residence or any other change in his or her circumstances which may affect his or her right to reside in the State under these Regulations, a family member of a Union citizen who is not a national of a Member State shall notify the registration officer of the registration district in which he or she is located of such change.

### **Entitlement to permanent residence in the State**

12. (1) Subject to paragraph (3) and Regulation 13, a person to whom these Regulations apply who has resided in the State in conformity with these Regulations for a continuous period of 5 years may remain permanently in the State.

(2) For the purposes of paragraph (1), continuity of residence in the State shall not be affected by temporary absences not exceeding 6 months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

(3) The entitlement to remain permanently in the State pursuant to paragraph (1) shall cease to exist where the person concerned has been absent from the State for a period exceeding 2 consecutive years.

### **Entitlement to permanent residence in the State of Union citizen no longer working in the State and his or her family members**

13. (1) Subject to Regulation 20, a Union citizen who has been in employment in the State or has pursued in the State an activity as a self-employed person, whether or not he or she has been resident in the State for a continuous period of 5 years, may apply to the Minister for a permanent residence certificate under Regulation 15 on the cessation of the activity if -

- (a) (i) he or she has reached pensionable age as defined in the Social Welfare Acts or has taken early retirement, and
- (ii) at the time of termination of the activity, he or she has resided continuously in the State for more than 3 years and has pursued the activity in the State for at least the previous 12 months,



- (b) having resided continuously in the State for more than 2 years, he or she ceases to pursue the activity in the State as a result of permanent incapacity for work, or
- (c) he or she has been incapacitated for work as a result of an accident at work or an occupational illness entitling him or her to a pension which is payable in whole or in part by the State.

(2) An application made under paragraph (1)(a) shall contain the particulars set out in Schedule 4 and be accompanied by such documentary evidence as may be necessary to support the application.

(3) The conditions as to length of residence and activity specified in paragraph (1)(a) and the condition as to length of residence specified in paragraph (1)(b) shall not apply if the spouse of the person is a citizen of the State or has renounced his or her Irish citizenship as a result of marriage to the person.

(4) (a) Subject to Regulation 20, a Union citizen who, after 3 years' continuous residence and activity in the State in employment or as a self-employed person pursues his or her activity in the territory of another Member State while retaining his or her residence in the State and returning to the State at least once a week may remain permanently in the State.

(b) Each period of activity referred to in paragraph (1)(a)(ii) or (b), if completed in the territory of another Member State, shall, for the purpose of entitlement to the rights referred to in that paragraph, be considered as having been completed in the State while the Union citizen retains his or her residence in the State and returns to the State at least once a week.

(5) Periods of inactivity because of circumstances outside the control of the person or of inactivity because of illness or accident shall be considered as periods of activity for the purposes of this Regulation.

(6) A family member, irrespective of his or her nationality, of a Union citizen who -

(a) has been in employment in the State or has pursued an activity as a self-employed person in the State, and

(b) is entitled to remain permanently in the State pursuant to paragraph (1),

may, where he or she has been residing with the Union citizen concerned in the State, remain permanently in the State.

(7) A family member who was residing with a Union citizen who has died and who, prior to his or her death, had been in employment in the State or had pursued an activity as a self-employed person in the State but had not acquired an entitlement to permanent residence in the State, may remain permanently in the State if -

(a) the Union citizen concerned had, on the date of his or her death, resided continuously in the State for at least 2 years,

(b) the death of the Union citizen had resulted from an accident at work or from an occupational illness, or

(c) the family member was an Irish citizen who has renounced his or her Irish citizenship as a result of marriage to the person concerned.

#### **Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State**

14. Without prejudice to Regulation 13, a family member of a Union citizen to whom Regulation 9(2) or 10(2) applies and who satisfies the conditions referred to in Regulation 9(2) or 10(2) shall acquire the right of permanent residence after lawfully residing in the State for a period of 5 consecutive years.

### **Issue of permanent residence certificate for Union citizen**

15. (1) A Union citizen who, by virtue of these Regulations, is entitled to remain permanently in the State may apply to the Minister for a permanent residence certificate.

(2) An application made under paragraph (1) shall contain the particulars set out in Schedule 4 and be accompanied by such documentary evidence as may be necessary to support the application.

(3) Where the Minister is satisfied that the Union citizen referred to in paragraph (1) is entitled to remain permanently in the State, he or she shall, as soon as is practicable, issue a permanent residence certificate in the form set out in Schedule 5 to the Union citizen.

### **Issue of permanent residence card for family member who is not national of Member State**

16. (1) A family member of a Union citizen, who is not a national of a Member State, and who, by virtue of these Regulations, is entitled to remain permanently in the State may, before the expiration date of the residence card issued to him or her, apply to the Minister for a permanent residence card.

(2) An application made under paragraph (1) shall contain the particulars set out in Schedule 6 and be accompanied by such documentary evidence as may be necessary to support the application.

(3) Where the Minister is satisfied that the family member referred to in paragraph (1) is entitled to remain permanently in the State, he or she shall, as soon as is practicable, but not later than 6 months following the date of submission of the application for the permanent residence card, issue a permanent residence card containing the particulars set out in Schedule 7 to the person concerned.

(4) A permanent residence card shall be valid for a period of 10 years and shall be renewable upon application to the Minister.

(5) The validity of the permanent residence card shall not be affected by absence from the State of the holder of the card for a continuous period of less than 2 years.

### **Continuity of residence**

17. (1) The Minister may require the production of satisfactory evidence by a person to whom these Regulations apply that he or she satisfies the residence requirements of these Regulations.

(2) The enforcement of a removal order against a person referred to in paragraph (1) shall operate to break the continuity of residence of the person concerned for the purposes of these Regulations.

### **Entitlements**

18. (1) Subject to the other provisions of these Regulations, a person to whom these Regulations apply shall be entitled -

(a) to the same rights of travel in or to or from the State as those to which Irish citizens are entitled,

(b) without prejudice to any restriction on that entitlement contained in the Employment Permits Acts 2003 and 2006, to seek and enter employment in the State in the like manner and to the like extent in all respects as Irish citizens,

(c) to carry on any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as Irish citizens,

(d) to receive, upon and subject to the terms and conditions applicable to Irish citizens, the same medical care and services and the same entitlements as those to which Irish citizens are entitled.

(2) (a) A person to whom these Regulations apply, other than a worker, self-employed person, or a person who retains such status and members of his or her family, shall not be entitled to receive assistance under the Social Welfare Acts -

(i) for 3 months following his or her entry into the State, or

(ii) where the person entered the State for the purposes of seeking employment, for such period exceeding 3 months, during which he or she is continuing to seek employment and has a genuine chance of being engaged.

(b) Prior to the acquisition of permanent residence in the State, a person referred to in subparagraph (a) shall not be entitled to receive maintenance grants for students (including those undertaking vocational training).

(3) A person to whom these Regulations apply may be asked to present a permanent residence certificate, residence card, permanent residence card, or evidence of an existing application for such a certificate or card, in order to exercise any entitlement under these Regulations, but failure to provide such document or evidence may not of itself be used as a reason to refuse a person so entitled to such entitlement.

(4) In this Regulation, “assistance under the Social Welfare Acts” means assistance under Part 3 of the Social Welfare Consolidation Act 2005 and includes any payment or services provided for in or under the Health Acts 1947 to 2004 and the Housing Acts 1966 to 2004.

### **Restrictions on the right of residence on grounds of public policy, public security or public health**

19. (1) Where the Minister is satisfied that the personal conduct of a person to whom these Regulations apply has been such that it would be contrary to public policy or public health or would endanger public security if he or she did not make that person and his or her family members the subject of a requirement under this paragraph, he or she may, by notice in writing, require that person and his or her family members, irrespective of their nationality -

(a) to reside or remain in particular districts or places in the State,

(b) to report at specified intervals to an immigration officer or member of the Garda Síochána specified in the notice, or

(c) both,

and the person and his or her family members shall comply with the requirement.

(2) For the purposes of paragraph (1), the Minister may -

(a) when issuing the residence card, or

(b) not later than 3 months from the date of arrival of the person concerned in the State,

request the competent authorities in the Member State of origin of the person concerned, or any other Member State, to provide information concerning any previous police record that the person concerned may have.

(3) Where the competent authority of a Member State requests the Minister to provide information concerning any previous police record that a person may have in the State, for the purposes of the Council Directive, the Minister shall provide such information within 2 months of the request being made.

(4) Where the competent authority of a Member State requests the Minister to allow the holder of an Irish passport who has been expelled from that Member State on grounds of public policy, public security or public health, to re-enter the State, such person shall be allowed to re-enter the State notwithstanding that the passport is no longer valid or the nationality of the holder is in dispute.

### **Removal from the State**

20. (1) (a) Subject to paragraph (6), the Minister may by order require a person to whom these Regulations apply to leave the State within the time specified in the order where-

(i) the person has been refused a residence card or a permanent residence certificate or card,

(ii) the person refuses to comply with a requirement under Regulation 19 or 22,

- (iii) the person is no longer entitled to be in the State in accordance with the provisions of these Regulations, or
  - (iv) in the opinion of the Minister, the conduct or activity of the person is such that it would be contrary to public policy or it would endanger public security or public health to permit the person to remain in the State.
- (b) The time specified in a removal order shall, unless the Minister certifies that the matter is urgent, be not be less than 10 working days in a case where the person concerned has not been issued with a residence card, or less than one month in any other case.
- (c) The Minister may impose an exclusion period on the person concerned in a removal order and that person shall not re-enter or seek to re-enter the State during the validity of that period.
- (d) Without prejudice to paragraph (1)(a)(iv), the Minister shall not, except on grounds of public order, public security or public health, make a removal order in respect of a person to whom these Regulations apply solely on the basis that the person concerned has served a custodial sentence.
- (e) A removal order made on grounds referred to in subparagraph (d) which has not been enforced after the expiry of more than 2 years from the date it was made shall not be enforced unless the Minister is satisfied that the circumstances giving rise to the making of the order still exist.
- (f) A removal order shall be in the form set out in Schedule 8.
- (2) (a) Where the Minister proposes to make a removal order he or she shall notify the person concerned in writing of his or her proposal and, where necessary and possible, the person shall be given a copy of the notification in a language that he or she understands.
- (b) A notification under this paragraph shall contain -
- (i) unless the Minister certifies that it would endanger the security of the State to make them known, the reasons giving rise to the proposal referred to in subparagraph (a),
  - (ii) a statement that the person concerned may make representations as set out in Schedule 9 to the Minister within 15 working days of the sending to him or her of the notification, and
  - (iii) if the Minister proposes to impose an exclusion period on the person concerned in the removal order, the proposed duration of the exclusion period.
- (3) (a) In determining whether to make a removal order and whether to impose an exclusion period in respect of a person the Minister shall take account of -
- (i) the age of the person,
  - (ii) the duration of residence in the State of the person,
  - (iii) the family and economic circumstances of the person,
  - (iv) the nature of the person's social and cultural integration with the State, if any,
  - (v) the state of health of the person, and
  - (vi) the extent of the person's links with his or her country of origin.
- (b) Where the Minister decides that a removal order should be made, he or she shall -
- (i) make the removal order, and
  - (ii) notify the person in writing, where necessary and possible in a language that the person understands, of his or her decision and, unless the Minister certifies that it

would endanger the security of the State to make them known, of the reasons for the decision.

- (c) A notice under subparagraph (b)(ii) may require the person the subject of the removal order to do any one or more of the following for the purpose of ensuring his or her removal from the State -
- (i) present himself or herself to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice,
  - (ii) produce any travel document, passport, travel ticket or other document in his or her possession required for the purpose of such removal to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice,
  - (iii) co-operate in any way necessary to enable a member of the Garda Síochána or immigration officer to obtain a travel document, passport, travel ticket or other document required for the purpose of such removal,
  - (iv) reside or remain in a particular district or place in the State pending removal from the State,
  - (v) report to a specified Garda Síochána station or immigration officer at specified intervals pending removal from the State,
  - (vi) notify such member of the Garda Síochána or immigration officer as may be specified in the notice as soon as possible of any change of address.
- (d) Where a notice under subparagraph (b)(ii) contains a requirement to do an act specified in subparagraph (c), a member of the Garda Síochána or immigration officer may, if he or she considers it necessary for the purpose of ensuring the removal of the person concerned from the State, require the person in writing to do any one or more of the acts specified in subparagraph (c) and any such further requirement shall have effect as if it were a requirement in a notice under subparagraph (b)(ii).
- (e) A further requirement under subparagraph (d) shall, where necessary and possible, be given to the person concerned in a language that he or she understands.
- (4) (a) A person to whom a notice under paragraph (3)(b)(ii) has been issued may without further notice be arrested and detained under warrant of an immigration officer or member of the Garda Síochána in any of the places listed in Schedule 10 in the custody of the officer or member of the Garda Síochána for the time being in charge of that place for the purpose of ensuring his or her departure from the State in accordance with the removal order concerned.
- (b) For the purposes of subparagraph (a), an arresting officer shall inform the Member in Charge in the case of a station, or the Governor, in any other case, of the arrest and direct that the person be detained until further notice.
  - (c) A person arrested and detained under subparagraph (a) may be detained only until such time (being as soon as is practicable) as he or she is removed from the State in compliance with the removal order concerned.
  - (d) A person arrested and detained under subparagraph (a) may be placed on a ship, railway train, road vehicle or aircraft about to leave the State by an immigration officer or a member of the Garda Síochána, and shall be deemed to be in lawful custody whilst so detained and until the ship, railway train, road vehicle or aircraft leaves the State.
  - (e) The master of any ship and the person in charge of any railway train, road vehicle or aircraft bound for any place outside the State shall, if so required by an immigration officer or a member of the Garda Síochána, receive a person in respect of whom a removal order has been made and his or her dependants, if any, on board such ship, railway train, road vehicle

or aircraft and afford him or her and his or her dependants proper accommodation and maintenance during the journey.

- (5) (a) Paragraph (4) shall not apply to a person who is under the age of 18 years.
- (b) If and for so long as the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 18 years, paragraph (4) shall apply as if he or she had attained the age of 18 years.
- (c) Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting in *loco parentis* or any other person) and such person is detained pursuant to this Regulation, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the Health Service Executive of the detention and of the circumstances thereof.
- (6) (a) A removal order may not, except on serious grounds of public policy, or public security, be made in respect of a person to whom these Regulations apply, where the person has an entitlement to reside permanently in the State.
- (b) A removal order may not, except on imperative grounds of public security, be made in respect of a Union citizen who -
- (i) has resided in the State for the previous 10 years, or
- (ii) subject to subparagraph (c), is a minor.
- (c) Subparagraph (b)(ii) shall not apply where it is in the best interests of the minor concerned that he or she should be removed from the State.
- (7) An application by or on behalf of a person to whom these Regulations apply for leave to apply for judicial review against a removal order shall not suspend the removal of the person concerned where -
- (a) the removal decision is based on a previous judicial decision,
- (b) the person concerned has had previous access to judicial review, or
- (c) the removal decision is based on imperative grounds of public security.
- (8) The Minister may, of his or her own volition or on application made by the person concerned after he or she has complied with a removal order, by order amend or revoke such an order.

### **Review of decisions**

21. (1) A person to whom these Regulations apply may seek a review of any decision concerning the person's entitlement to be allowed to enter or reside in the State.
- (2) A request for review under paragraph (1) shall contain the particulars set out in Schedule 11.
- (3) A review under this Regulation of a decision under paragraph (1) shall be carried out by an officer of the Minister who -
- (a) is not the person who made the decision,
- and
- (b) is of a grade senior to the grade of the person who made the decision.
- (4) The officer determining the review may -
- (a) confirm the decision the subject of the review on the same or other grounds having regard to the information provided for the review or substitute his or her decision for the decision the subject of the review, or
- (b) set aside the decision and substitute his or her determination for the decision.

## **Public health**

22. (1) Subject to paragraph (2), the Minister may restrict the freedom of movement or make a removal order in respect of a person to whom these Regulations apply where he or she is satisfied that the person is suffering from a disease specified in Schedule 1.

(2) Paragraph (1) shall not apply where the person concerned contracted the disease after the expiration of 3 months from the date of arrival of the person in the State.

(3) Where in the Minister's opinion in any particular case it is desirable to do so, he or she may require a person to whom these Regulations apply to undergo, free of charge, a medical examination by a registered medical practitioner for the purpose of ascertaining whether or not the person is suffering from any disease specified in Schedule 1.

## **Exclusion orders**

23. (1) The Minister may, if he or she considers it necessary in the interest of public security or public policy, by order exclude a person to whom these Regulations apply from the State.

(2) (a) A person the subject of an exclusion order may apply to the Minister to have the exclusion order revoked.

(b) An application under subparagraph (a) shall be made not earlier than 3 years from the date of enforcement of the exclusion order and shall set out the reasons why the order should be revoked and demonstrate that there has been a material change in the circumstances which justified the making of the order.

(3) The Minister shall determine an application under paragraph (2) as soon as is practicable and, in any event, not later than 6 months after the date of receipt of the application.

(4) The Minister may by order amend or revoke an exclusion order.

(5) (a) Subject to subparagraph (b), the Minister may allow a person who is the subject of an exclusion order to re-enter the State for the purposes of attending a hearing connected with a review of a decision under these Regulations.

(b) Subparagraph (a) shall not apply where, in the opinion of the Minister -

(i) the person's presence in the State would be contrary to public security or public policy,  
or

(ii) the review concerns a denial of entry to the State.

(c) Nothing in these Regulations shall operate to confer an entitlement on a person who is the subject of an exclusion order to enter the State while the Minister is considering an application under paragraph (2).

## **Cessation of entitlements**

24. (1) Where it is established that a person to whom these Regulations apply has acquired any rights or entitlements under these Regulations by fraudulent means then that person shall immediately cease to enjoy such rights or entitlements.

(2) In these Regulations, "fraudulent means" includes marriages of convenience.

## **Offences**

25. A person who -

(a) being a person to whom these Regulations apply, fails to comply with any requirement of these Regulations or under these Regulations, or

(b) asserts an entitlement to any rights under these Regulations on the basis of information which he or she knows to be false or misleading in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 12 months, or both.

#### **Notices, etc.**

26. (1) Where a notice is required or authorised by or under these Regulations to be served on or given to a person, it shall be addressed to him or her and shall be served on or given to him or her -

(a) by delivering it to him or her, or

(b) by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service prescribed by the Minister, addressed to him or her at the address most recently furnished by him or her or in the case of his or her legal representative, if any, at his or her business address, or in a case in which an address for service has been furnished, at that address.

(2) Where a notice under these Regulations has been sent to a person in accordance with paragraph (1)(b), the notice shall be deemed to have been duly served on or given to the person on the third day after the day on which it was so sent.

#### **Revocation.**

27. The European Communities (Free Movement of Persons) Regulations 2006 (S.I. No. 226 of 2006) are revoked.

*Regulations 4(1)(a) and (2)(a), 5(4)(b) and 22(1)*

### **SCHEDULE 1**

#### **DISEASES REFERRED TO IN REGULATIONS 4(1)(a), (2)(a), 5(4)(b) AND 22(1)**

1. Diseases subject to the International Health Regulations for the time being adopted by the World Health Assembly of the World Health Organisation.
2. Other infectious or contagious parasitic diseases in respect of which special provisions are in operation to prevent the spread of such diseases from abroad.

*Regulation 7(1)(b)*

### **SCHEDULE 2**

#### **PARTICULARS TO BE CONTAINED IN APPLICATION FOR RESIDENCE CARD BY FAMILY MEMBER OF A UNION CITIZEN WHO IS NOT A NATIONAL OF A MEMBER STATE**

##### **Applicant's particulars**

1. Name of applicant
2. Address of applicant
3. Date and place of birth of applicant
4. Nationality of applicant
5. Number, date and place of issue of applicant's passport/national identity card (original of document to be provided)
6. Occupation, if any, of applicant (copy of Employment Permit, if applicable)
7. Immigration Reference Number and PPS Number in Ireland
8. Declaration of any criminal record
9. Immigration history in Ireland
10. Photographs or other documentary evidence

##### **Particulars of Union citizen of whom the applicant is a family member/dependant**

11. Name of Union citizen
12. Address of Union citizen in Ireland
13. Date and place of birth of Union citizen
14. Nationality of Union citizen
15. Number, date and place of issue of Union citizen's passport/national identity card (original of document to be provided)



16. Occupation of Union citizen in Ireland (copy of Employment Permit, if applicable)
17. Immigration Reference Number, if any, and PPS No. of Union citizen in Ireland
18. Details of relationship between applicant and Union citizen
19. Date on which Union citizen first entered Ireland.

*Regulation 7(2)*

### **SCHEDULE 3**

#### **PARTICULARS TO BE CONTAINED IN RESIDENCE CARD OF FAMILY MEMBER OF UNION CITIZEN WHO IS NOT A NATIONAL OF A MEMBER STATE**

**The residence card shall contain the following particulars -**

1. Name of person
2. Nationality
3. Date of Birth
4. Date of issue of card
5. Date of expiry of card
6. Unique number
7. Record in electronic form of biometric data of the person to whom it is given
8. Statement that the card is not, and may not be used as, a document establishing the nationality or identity of the holder
9. An indication that the person is a family member of a Union citizen
10. Statement that the card is the property of the Minister for Justice, Equality and Law Reform or is the property of Garda National Immigration Bureau
11. Photograph

*Regulations 13(2) and 15(2)*

### **SCHEDULE 4**

#### **PARTICULARS TO BE CONTAINED IN APPLICATION FOR PERMANENT RESIDENCE CERTIFICATE BY UNION CITIZEN**

**Applicant's particulars**

1. Name of applicant
2. Address of applicant in Ireland
3. Date and place of birth of applicant
4. Nationality of applicant
5. Number, date and place of issue of applicant's passport/national identity card (original of document to be provided)
6. Duration of residence of applicant in Ireland
7. Occupation of applicant in Ireland (copy of Employment Permit, if applicable)
8. Duration of employment in Ireland
9. If no longer in employment/self-employment, state reason (e.g. retired, incapacitated, occupational illness, other)
10. Immigration Reference Number, if any, and PPS Number in Ireland
11. Photographs and other documentary evidence

*Regulation 15(3)*

### **SCHEDULE 5**

#### **FORM OF PERMANENT RESIDENCE CERTIFICATE**

**Departmental letter to issue to Union citizen stating as follows.**

European Communities (Free Movement of Persons) ( No. 2) Regulations 2006

To: Name and address of applicant

Date of birth

Nationality

I am directed by the Minister for Justice, Equality and Law Reform to refer to Regulation 15(3) of the European Communities (Free Movement of Persons) ( No. 2) Regulations 2006 regarding the issuance of a permanent residence certificate to a European Union citizen who is entitled to remain permanently in the State;

AND WHEREAS you, \_\_\_\_\_ bearing the \_\_\_\_\_ Passport Number \_\_\_\_\_ or National Identity Card Number \_\_\_\_\_ are a person in respect of whom a permanent residence certificate may be issued under the said Regulation 15(3);

I hereby certify that you are entitled to remain permanently in the State.

[Signature of officer of Minister]

[Name and rank of officer of Minister]

On behalf of the Minister for Justice, Equality and Law Reform

[date of signature]

Permanent Residence Certificate Number: \_\_\_\_\_

**Note:** This certificate is not, and may not be used as, a document establishing the nationality or identity of the holder.

*Regulation 16(2)*

## **SCHEDULE 6**

### **APPLICATION FOR PERMANENT RESIDENCE CARD BY A FAMILY MEMBER OF A UNION CITIZEN WHO IS NOT A NATIONAL OF A MEMBER STATE**

#### **Applicant's details**

1. Name of applicant
2. Address of applicant
3. Date and place of birth of applicant
4. Nationality of applicant
5. Number, date and place of issue of applicant's passport (original of document to be provided)
6. Occupation, if any, of applicant (copy of Employment Permit, if applicable)
7. Immigration reference and PPS Number
8. Declaration of any criminal record
9. Immigration history in Ireland
10. Photographs or other documentary evidence

#### **Particulars of Union citizen of whom the applicant is a family member or dependant**

11. Name of Union citizen
12. Address of Union citizen in Ireland
13. Date and place of birth of Union citizen
14. Nationality of Union citizen
15. Number, date and place of issue of Union citizen's passport/national identity card (original of document to be provided)
16. Occupation of Union citizen in Ireland (copy of Employment Permit, if applicable)
17. Immigration Reference Number, if any, PPS Number of Union citizen in Ireland
18. Details of relationship between applicant and Union citizen

*Regulation 16(3)*

## **SCHEDULE 7**

### **PARTICULARS TO BE CONTAINED IN PERMANENT RESIDENCE CARD OF A FAMILY MEMBER OF A UNION CITIZEN WHO IS NOT A NATIONAL OF A MEMBER STATE**

The permanent residence card shall contain the following particulars and may be issued in the form of a letter from the Minister -

1. Name of the person
2. Nationality
3. Date of issue of card
4. Date of expiry of card
5. Unique number
6. Record in electronic form of biometric data of the person to whom it is given
7. Statement that the card is not, and may not be used as, a document establishing the nationality or identity of the holder
8. Indication that the person is a permanent resident as a family member of a Union citizen
9. Statement that the card is the property of the Minister for Justice, Equality and Law Reform or the Garda National Immigration Bureau
10. Photograph

**SCHEDULE 8  
FORM OF REMOVAL ORDER**

**EUROPEAN COMMUNITIES (FREE MOVEMENT OF PERSONS) ( NO. 2) REGULATIONS 2006**

To: [name and address of applicant]

WHEREAS it is provided by Regulation 20 of the European Communities (Free Movement of Persons) ( No. 2) Regulations 2006 that, subject to the provisions of that Regulation the Minister for Justice, Equality and Law Reform may by order require a person to whom the Regulations apply to leave the State within the time specified in the order;

AND WHEREAS you are a person in respect of whom a removal order may be made under the said Regulation 20;

NOW I, \_\_\_\_\_ on behalf of the Minister for Justice, Equality and Law Reform, in exercise of the powers conferred by the said Regulation 20, hereby require you to leave the State within the period ending on the date specified in the notice served on or given to you under the said Regulation 20(3)(b)(ii).

FURTHERMORE, I hereby impose an exclusion period on you as provided for in Regulation 20(1)(c) which means that you shall not re-enter or seek to re-enter the State prior to \_\_\_\_\_.

[Signature of officer of Minister]

[Name and rank of officer of Minister]

On behalf of the Minister for Justice, Equality and Law Reform

[date of signature]

*Regulation 20(2)(b)(ii)*

**SCHEDULE 9**

**REPRESENTATIONS WHICH MAY BE MADE TO MINISTER AS TO WHY REMOVAL ORDER SHOULD NOT BE MADE**

Representations to the Minister may be made, as to why he should not make a Removal Order in respect of the person concerned, addressing the following points:

1. Name, address in Ireland
2. Nationality
3. Immigration reference number
4. PPS Number in Ireland
5. Age
6. Duration of residence in the State
7. Family and economic circumstances
8. Nature of the person's social and cultural integration into the State
9. State of health
10. Extent of the person's links with his or her country of origin.

*Regulation 20(4)(a)*

**SCHEDULE 10  
PLACES OF DETENTION**

A Garda Síochána station  
Castlerea Prison  
Cloverhill Prison  
Cork Prison  
Limerick Prison  
The Midlands Prison  
Mountjoy Prison  
Saint Patrick's Institution, Dublin  
The Training Unit, Glengariff Parade, Dublin  
Wheatfield Prison, Dublin.

**SCHEDULE 11**

**PARTICULARS TO BE CONFIRMED IN REQUEST FOR REVIEW OF DECISION**

1. Name and address in Ireland
2. Immigration reference number
3. PPS Number
4. Nationality
5. Name, Date of Birth, Relationship of family members residing with requester in Ireland
6. Details of legal representation, if any
7. Statement of the grounds on which the requester seeks the review of the decision made or the Removal Order (indicating where, in the view of the requester, the deciding officer erred in fact and/or in law)
8. Any additional statements which the requester wishes to be considered
9. Additional documentation which the requester wishes to be considered

GIVEN under my Official Seal,  
18 December 2006



L.S.

MICHAEL McDOWELL  
Minister for Justice, Equality  
and Law Reform.

**Explanatory Note**

(This note is not part of the Instrument and does not purport to be a legal interpretation).

This Order was made for the purpose of giving effect in Irish law to the Directive on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC). It replaces the European Communities (Free Movement of Persons) Regulations 2006 (S.I. No. 226 of 2006) consequent upon the enlargement of the European Union on 1 January 2007.