

2004 No. 1236

IMMIGRATION

**The Immigration (European Economic Area) and Accession
(Amendment) Regulations 2004**

<i>Made</i> - - - -	<i>28th April 2004</i>
<i>Laid before Parliament</i>	<i>30th April 2004</i>
<i>Coming into force</i> - -	<i>1st May 2004</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred on him by the said section 2(2), and of the powers conferred on him by section 109 of the Nationality, Immigration and Asylum Act 2002(c), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Immigration (European Economic Area) and Accession (Amendment) Regulations 2004 and shall come into force on 1st May 2004.

Amendment of Immigration (European Economic Area) Regulations 2000

2.—(1) The Immigration (European Economic Area) Regulations 2000(d) are amended as follows.

(2) In regulation 2(1) (general interpretation), after the definition of “the 1999 Act” there is inserted ““the Accession Regulations 2004” means the Accession (Immigration and Worker Registration) Regulations 2004(e).”.

(3) In regulation 3 (interpretation of “worker”, “self-employed person” etc), for paragraph (2) substitute—

“(2) For the purposes of paragraph (1)(e), where family members of the person concerned reside in the United Kingdom and their right to so reside is dependent upon their being family members of that person—

- (a) the requirement for that person to have sufficient resources to avoid becoming a burden on the social assistance system of the United Kingdom shall only be satisfied if his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden;

(a) S.I. 2000/1813.
(b) 1972 c.68.
(c) 2002 c.41.
(d) S.I. 2000/2326; the relevant amending instrument is S.I. 2003/3188.
(e) S.I. 2004/1219.

- (b) the requirement for that person to be covered by sickness insurance in respect of all risks in the United Kingdom shall only be satisfied if he and the family members are so covered.

(3) For the purposes of paragraph (1)(f) where family members of the person concerned reside in the United Kingdom and their right to so reside is dependent upon their being family members of that person —

- (a) the requirement for that person to be in receipt of a pension or benefits sufficient to avoid his becoming a burden on the social security system of the United Kingdom shall only be satisfied if that pension or those benefits are sufficient to avoid him and the family members becoming such a burden;
- (b) the requirement for that person to be covered by sickness insurance in respect of all risks in the United Kingdom shall only be satisfied if he and the family members are so covered.

(4) For the purposes of paragraph (1)(g), where family members of the person concerned reside in the United Kingdom and their right to so reside is dependent upon their being family members of that person, the requirement for that person to assure the Secretary of State that he has sufficient resources to avoid him becoming a burden on the social assistance system of the United Kingdom shall only be satisfied if he assures the Secretary of State that his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden.

(5) For the purposes of paragraph (1)(e) and (f) and paragraphs (2) and (3) the resources of the person concerned and, where applicable, any family members are to be regarded as sufficient if they exceed the level below which social assistance might be granted under the United Kingdom benefit system to a United Kingdom national in the same circumstances.”.

(4) In regulation 33 (appeals under the 2002 Act)—

- (a) for paragraph (1A) there is substituted—

“(1A) A person who has been issued with a residence permit, a residence document or a registration certificate or whose passport has been stamped with a family member residence stamp shall have no right of appeal under section 82(1) of the 2002 Act. Any existing appeal shall be treated as abandoned.”.

- (b) at the end of that regulation there is inserted—

“(5) In paragraph (1A),

- (a) “registration certificate” has the same meaning as in regulation 1(2)(h) of the Accession Regulations 2004;
- (b) “family member residence stamp” means a stamp in the passport of a family member who is not an EEA national confirming that the family member of an accession state worker requiring registration has a right of residence under these Regulations as the family member of that worker; and in this paragraph reference to family member is to a family member who is not an EEA national and “accession state worker requiring registration” has the same meaning as in regulation 2 of the Accession Regulations 2004. ”.

Amendment of the Accession (Immigration and Worker Registration) Regulations 2004

3.—(1) The Accession (Immigration and Worker Registration) Regulations 2004 are amended as follows.

(2) In regulation 2 (“Accession State worker requiring registration”)—

- (a) for paragraph (6)(b) there is substituted—

“(b) a family member of a Swiss or EEA national who is in the United Kingdom as—

- (i) a worker, other than as an accession State worker requiring registration;
- (ii) a self-sufficient person;

- (iii) a retired person;
 - (iv) a self-employed person; or
 - (v) a student.”;
- (b) For paragraph (9)(c)(i) there is substituted—
- “(i) in relation to a worker or a self-employed person, his spouse and his children who are under 21 or dependent on him;”.

28th April 2004

Des Browne
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2000 (“the 2000 Regulations”) and the Accession (Immigration and Worker Registration) Regulations 2004 (“the 2004 Regulations”).

1. The 2000 Regulations are amended as follows—

- (a) *regulation 2(3)* replaces regulation 3(2), amending the resources condition under which family members of EEA nationals who are self-sufficient, retired or studying have a right to reside in the United Kingdom. This regulation also amends the level at which resources of a self-sufficient person or a retired person and any of their family members are to be regarded as sufficient to avoid becoming a burden on the social assistance system or social security system of the United Kingdom;
- (b) *regulation 2(4)* replaces regulation 33(1A) and provides that a person who has been issued with a residence permit, residence document or registration certificate or whose passport has been stamped with a family member residence stamp has no right of appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002. Any existing appeal is to be treated as abandoned.

2. *Regulation 3* amends regulation 2 of the Accession (Immigration and Worker Registration) Regulations 2004 so that, in accordance with Regulation (EEC) No. 1612/68, a national of a relevant accession State (as defined in regulation 1 of those regulations) is not an accession State worker requiring registration (as defined in regulation 2 of those regulations) during any period in which he is a family member of a Swiss or EEA national who is in the United Kingdom as a self-employed person. A family member in relation to a self-employed person means his spouse and his children who are under 21 or dependent on him.

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