

EXPLANATORY MEMORANDUM TO
THE ACCESSION (IMMIGRATION AND WORKER REGISTRATION)
(REVOCAION, SAVINGS AND CONSEQUENTIAL PROVISIONS)
REGULATIONS 2011

2011 No. 544

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 These Regulations revoke the Accession (Immigration and Worker Registration) Regulations 2004 (as amended) (“the 2004 Regulations”) which regulate access to the United Kingdom labour market by nationals of eight of the States that acceded to the European Union in 2004. This is required because the Treaty governing the accession of those States to the EU provided that existing Member States may restrict such access to the labour market for up to seven years following accession and this period expires on 30 April 2011. These Regulations also make consequential savings and transitional provisions and amend the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) which regulate the right of entry and residence in the United Kingdom of nationals of States of the European Economic Area and Switzerland.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 Under the treaty signed at Athens on 16 April 2003 (“the Accession Treaty”), the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic acceded to the European Union on 1 May 2004. The Accession Treaty provides, in derogation from the general free movement of worker rights of European Union nationals, that the existing Member States can apply national measures regulating access to their labour market by nationals of the accession States (other than nationals of the Republic of Cyprus and the Republic of Malta) (“the Accession States”). Under the Accession Treaty these national measures could be applied during the seven year period following the date of accession, that is, until 30 April 2011 (“the accession period”). As the accession period ends on 30 April 2011, the UK is required to end its national measures.

4.2 The national measures regulating labour market access for nationals from the Accession States are contained in the 2004 Regulations. These Regulations provide that an accession State worker requiring registration (which is defined in regulation 2 of the 2004 Regulations) will be entitled to work in the UK whilst working for an authorised employer (as defined in regulation 7 of the 2004 Regulations) and that such a person is required to register such employment with the Secretary of State. Such a person would then be considered to be legally working in the United Kingdom in accordance with those Regulations (as set out in regulation 2(7) of the 2004 Regulations). This is known as the ‘Worker Registration Scheme’ (‘the WRS’). If they do this for an uninterrupted period of 12 months, then the person ceases to be an accession State worker requiring registration and the person is entitled to full labour market access and residence in the UK without restriction in accordance with the 2006 Regulations.

4.3 The right to reside in the UK for nationals from European Economic Area States and Switzerland is governed by the 2006 Regulations. Those Regulations transposed Directive 2004/38/EC of the European Parliament and the Council of 29th 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.

4.4 During any time in which the accession State national requiring registration was legally working in accordance with the 2004 Regulations, regulation 5 of those Regulations provided that they should be treated as a worker in accordance with the 2006 Regulations and those 2006 Regulations applied to them accordingly.

4.5 Following the revocation of the 2004 Regulations, nationals from the accession States referred to above who wish to work will be entitled to full labour market access and a right to reside in the UK in accordance with the 2006 Regulations, as amended by these Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 As set out in paragraph 4.1 above the terms of Accession Treaty mean that after 30 April 2011, the UK may no longer apply national measures regulating access to the labour market to nationals of the accession States. It is therefore necessary to revoke the 2004 Regulations establishing the Worker Registration Scheme.

7.2 The Worker Registration Scheme was introduced in the UK as a transitional measure to monitor Accession State nationals' access to the UK labour market. The Scheme does not place any restriction on nationals of the Accession States' access to the labour market in terms of numerical ceilings, resident labour market tests or skills tests but, as set in paragraph 4.2 above, it does make employment subject to a requirement that the worker register their employment under the Scheme within one month of starting work. Workers cease to be subject to the requirement to register after 12 months continuous employment in the UK in accordance with the 2004 Regulations.

7.3 Regulation 2 of these Regulations revokes the 2004 Regulations.

7.4 Regulation 3(2) and (3) of these Regulations make saving and amending provisions which preserve, until 30 April 2012, a power for the Secretary of State to issue documents pursuant to applications made in accordance with the 2004 Regulations in respect of work which commenced on or before 30 April 2011 and which are outstanding after 30 April 2011. It is considered necessary to extend this power because, amongst other matters, an applicant may wish to have a document to evidence that they were properly registered under the 2004 Regulations during that earlier period and entitled to access the labour market and reside in the UK at that point. Further, the receipt of such a document by an employer can provide a statutory defence for that employer against any liability to the offence, under regulation 9 of the 2004 Regulations, of employing an accession State national requiring registration when they were not authorised to do so.

7.5 Regulation 3(4) provides that the 2004 Regulations shall continue to have effect only to the extent necessary to apply the consequential amendments made to the 2006 Regulations by these revoking Regulations.

7.6 Regulation 4 of the Regulations provide for the necessary revocations of some or all of the related Regulations which are listed in Schedule 1.

7.7 Regulation 5 and Schedule 2 make consequential amendments to the 2006 Regulations which are intended to set out how the residence of a person subject to the requirement to be registered under the Worker Registration Scheme on 30 April 2011 is to be treated for the purposes of the 2006 Regulations. Schedule 2 inserts a new regulation 7A into the 2006 Regulations for these purposes.

7.8 As referred to in paragraph 4.2 and 4.4 above, any person who had been an accession State worker requiring registration and who ceased to be so because they had legally worked in the UK for an uninterrupted period of 12 months or more will always have resided in accordance with the 2006 Regulations and, subject to their current circumstances, would continue to do so.

7.9 Accordingly, provision is made for those persons who remained accession State workers requiring registration on 30 April 2011 when the

Scheme comes to an end and who had not completed a period of 12 months of uninterrupted legal work. For these persons, the effect of the amendments are that any period on or before 30 April 2011 during which a person worked in accordance with Worker Registration Scheme while it was in force will be treated, from 1 May 2011, as a period during which the worker had a right of residence for the purposes of the 2006 Regulations. However, such a person will not be able rely on any residence in the UK during which the person was subject to the registration requirement but was not registered in accordance with the Scheme.

7.10 In addition, these provisions specify that a registration certificate issued under the 2004 Regulations to an accession State worker requiring registration on 30 April 2011, will be treated as a registration certificate issued under the 2006 Regulations where, on 30 April 2011, the certificate was valid on that date because the holder was in the employment specified on the document. The purpose of this provision is to provide a benefit to Accession State nationals who have such a certificate such that they do not need, if they so wished, to apply for a new registration certificate under the 2006 Regulations from the 1 May 2011.

- Consolidation

7.11 These Regulations insert one new regulation (7A) into the 2006 Regulations together with minor consequential amendments. Accordingly, the Home Office does not intend to consolidate these Regulations.

8. Consultation outcome

8.1 The UK is required, by the provisions of the Accession Treaty, to terminate the Worker Registration Scheme by 30 April 2011. Accordingly, it has not consulted on the need to revoke the 2004 Regulations.

9. Guidance

9.1 The UK Border Agency will be publishing on its website guidance for applicants and employers on the impact of the closure of the Worker Registration Scheme.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. The lifting of the registration requirement imposes no additional costs on business, charities or voluntary bodies and means that employers will no longer need to be compliant with the requirement to ensure that an accession State worker requiring registration has registered their employment.

10.2 The impact on the public sector is that the UK Border Agency will no longer incur the cost of administering the Worker Registration Scheme. This impact is negligible for the public sector because these costs were recovered through the fee charged for applications.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business. Revocation of the 2004 Regulations means that small businesses will no longer need to check that Accession State nationals in their employ are working in compliance with those Regulations.

12. Monitoring & review

12.1 The terms of the Accession Treaty means that transitional measures regulating labour market in respect of Accession State nationals can no longer be applied after 30 April 2011. The closure of Worker Registration Scheme will not therefore be subject to any review aimed at establishing whether there is a need for a successor arrangement.

13. Contact

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