

**EXPLANATORY MEMORANDUM TO  
THE IMMIGRATION (EUROPEAN ECONOMIC AREA) (AMENDMENT)  
REGULATIONS 2005**

**2005 No.47**

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

**2. Description**

2.1 This instrument makes amendments to the Immigration (European Economic Area) Regulations 2000 (S.I. 2000/2326 as amended).

2.2 The changes are that:

- (a) the third country family member of a United Kingdom national returning to the United Kingdom after exercising EC treaty rights abroad must be lawfully resident in an EEA state in order to gain rights of residence in the United Kingdom but it need no longer be shown that the United Kingdom national did not leave to the United Kingdom in order to enable the family member to acquire residence rights;
- (b) a family member of an EEA national applying for a family permit to come to the United Kingdom with the EEA national must be lawfully resident in an EEA state, if he is applying from within the EEA;
- (c) the time within which a person applying for a family permit must travel to the United Kingdom is reduced from one year to six months; and
- (d) the rule whereby all EEA appeals to the Special Immigration Appeals Commission are heard in-country is abolished.

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

3.1 None

**4. Legislative Background**

4.1 The changes removing the requirement for a returning United Kingdom national to show that he did not leave the United Kingdom in order to enable his family member to acquire residence rights and adding the requirement for a family member of a returning United Kingdom national to be lawfully resident in an EEA state result from a judgment of the European Court of Justice in the case of *Akrich* (Case C-109/01) which clarified the extent of the rights of family members of EU nationals returning to their country of nationality after spending time exercising their EC treaty rights in another Member State. The change requiring family members of EEA nationals applying for family permits in an

EEA state to be lawfully resident in an EEA state also results from the principles established in *Akrich*.

4.2. The change to the duration of family permits is a policy change.

4.3 The change to the nature of appeal rights to the Special Immigration Appeals Commission brings appeals under the Immigration (European Economic Area) Regulations 2000 into line with the rule set out for other appeals in section 2(5) of the Special Immigration Appeals Commission Act 1997.

## **5. Extent**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

Not applicable

## **7. Policy background**

7.1 The changes made by the Regulations are the outcome of a review of the issue of family permits conducted under the remit of the marriage taskforce. The taskforce looked into the abuse of the immigration provisions allowing residence on basis of marriage to a British Citizen or an EEA National exercising a treaty right in the United Kingdom. They complement the provisions of the Immigration (Procedure for Marriage) Regulations 2005 (S.I. 2005/15) and should be seen as part of a comprehensive package against those attempting to engage in a marriage of convenience in order to gain the right to reside in the United Kingdom.

7.2 The reduction of the length of a family permit from one year to six months brings it into line the length of a visit visa issued under domestic law. This, combined with the requirement to demonstrate lawful residence through implementation of the judgment of the European Court of Justice in *Akrich*, is aimed at minimising the potential displacement to EEA countries of those seeking to engage in a marriage of convenience to enable residence in the UK

7.3 The Regulations also provide a procedural amendment to bring appeals to the Special Immigration Appeals Commission under the Immigration (European Economic Area) Regulations 2000 into line with procedures elsewhere, reflecting government policy in this area.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

## **9. Contact**

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