
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement 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 amending Regulation (EEC) No 1612/68 and repealing Directives [64/221/EEC](#), [68/360/EEC](#), [72/194/EEC](#), [73/148/EEC](#), [75/35/EEC](#), [90/364/EEC](#), [90/365/EEC](#) and [93/96/EEC](#). The Regulations come into force on 30th April 2006. A Transposition Note setting how the Government has transposed into UK law the main elements of this Directive will be available on the Office of Public Sector Information website.

Directive [2004/38/EC](#) provides for the free movement of Union citizens and their family members within the territory of the member States. The repealed Directives were extended to Norway, Iceland and Liechtenstein by the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (OJNo. L 1, 3.1.94, p.3) and it is envisaged that Directive [2004/38/EC](#) will also be extended to these States. In addition, an agreement between the European Community and its member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons, signed at Brussels on 21st June 1999 (Cm 4904) confers on Swiss nationals and their family members broadly similar rights of entry into and residence in the United Kingdom as were contained in the repealed Directives. As was the case with the Regulations implementing the repealed Directives, these Regulations will also apply to nationals from Norway, Iceland Liechtenstein and Switzerland and their family members as well as to Union citizens and their family members. This will avoid having to apply a slightly different free movement regime to nationals from Norway, Iceland, Liechtenstein and Switzerland and their family members from that which has to apply to Union citizens and their family members under Directive [2004/38/EC](#).

Directive [2004/38/EC](#) is based on the provisions of the repealed Directives but it also contains new provisions, some of which reflect the case law of the European Court of Justice relating to the repealed Directives and the free movement of persons and some of which represent new developments of the law on the free movement of persons. The main new developments, which are reflected in these Regulations, are:

- (a) the inclusion of civil partners as family members of EU nationals along with spouses so far as member States who treat such partnerships as equivalent to marriage are concerned;
- (b) the introduction of an initial right of residence of 3 months in a host member State for EU nationals and their family members provided they do not become an unreasonable burden on the social assistance system of the host member State – this right of residence is not conditional on the EU national being, for example, a worker, self-employed, as was the case under the repealed Directives;
- (c) the introduction of a permanent right of residence in a host member State, which generally applies after 5 years residence in that member State.

Part 1 (regulations 1 to 10) of the Regulations contains the interpretation provisions for the Regulations. Part 2 (regulations 11 to 15) sets out the free movement rights conferred on EEA nationals—

- (i) the right of EEA nationals and their family members to be admitted to the United Kingdom provided they have the relevant documents (*regulation 11*);

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- (ii) the right of EEA nationals and their family members to reside in the United Kingdom for an initial period of 3 months (*regulation 13*);
- (iii) the right of a “qualified person” (a jobseeker, worker, self-employed person, self-sufficient person or student), a family member a qualified person, and a “family member who has retained the right of residence” (for example, a family member of a deceased qualified person who satisfies specified conditions) to reside in the United Kingdom for as long as they have this status (*regulation 14*); and
- (iv) the right of EEA nationals and their family members to permanent residence in the United Kingdom in specified circumstances (for example, after they have resided in the United Kingdom under the Regulations for 5 years (*regulation 15*)).

Part 3 (regulations 16 to 18) provides for the issue of residence documentation, which can be used as proof of the rights of residence provided for in the Regulations. Part 4 (regulations 19 to 21) provides for the exclusion and removal of EEA nationals and their family members. As under the previous Directives, EEA nationals and their family members can be excluded on public policy, public security and public health grounds. Part 5 (regulations 22 to 24) contains procedural provisions relating to persons who claim admission under the Regulations, who are refused admission, or are being removed. Part 6 (regulations 25 to 29) and Schedule 1 set out the appeal rights in relation to decisions taken under the Regulations. Schedule 2 deals with the effect of the Regulations on other legislation. Schedule 3 lists the regulations that are being repealed by the new Regulations. Schedule 4 contains transitional provisions. Schedule 5 contains consequential amendments.