

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 2(6) of the European Union (Accessions) Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

IMMIGRATION

**Accession (Immigration and Worker
Registration) Regulations 2004**

Made - - - - 2004
Coming into force - - 1st May 2004

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the right of entry into, and residence in, the United Kingdom and access to the labour market of the United Kingdom, in exercise of the powers conferred on him by section 2(2), and in exercise of the powers conferred upon him by section 2 of the European Union (Accessions) Act 2003⁽³⁾, hereby makes the following Regulations, a draft of which has been approved by resolution of each House of Parliament:

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Accession (Immigration and Worker Registration) Regulations 2004 and shall come into force on 1st May 2004.

(2) In these Regulations —

- (a) “the 1971 Act” means the Immigration Act 1971⁽⁴⁾;
- (b) “the 2000 Regulations” means the Immigration (European Economic Area) Regulations 2000⁽⁵⁾;

(1) S.I.2000/1813 and S.I. 2004/706.
(2) 1972 c. 68.
(3) 2003 c. 35.
(4) 1971 c. 77.
(5) S.I. 2000/2326.

- (c) “accession period” means the period beginning on 1st May 2004 and ending on 30th April 2009;
- (d) “accession State worker requiring registration” shall be interpreted in accordance with regulation 2;
- (e) “authorised employer” shall be interpreted in accordance with regulation 7;
- (f) “EEA State” means a Member State, other than the United Kingdom, or Norway, Iceland or Liechtenstein, and “EEA national” means a national of an EEA State;
- (g) “employer” means, in relation to a worker, the person who directly pays the wage or salary of that worker;
- (h) “registration certificate” means a certificate issued under regulation 8 authorising an accession State worker requiring registration to work for an employer;
- (i) “relevant accession State” means the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the Slovak Republic;
- (j) “self-sufficient person” has the same meaning as in regulation 3 of the 2000 Regulations;
- (k) “worker” means a worker within the meaning of Article 39 of the Treaty establishing the European Community⁽⁶⁾, and “work” and “working” shall be construed accordingly.

“Accession State worker requiring registration”

2.—(1) Subject to the following paragraphs of this regulation, “accession State worker requiring registration” means a national of a relevant accession State working in the United Kingdom during the accession period.

(2) A national of a relevant accession State is not an accession State worker requiring registration if on 30th April 2004 he had leave to enter or remain in the United Kingdom under the 1971 Act and that leave was not subject to any condition restricting his employment.

(3) A national of a relevant accession State is not an accession State worker requiring registration if he was legally working in the United Kingdom on 30th April 2004 and had been legally working in the United Kingdom without interruption throughout the period of 12 months ending on that date.

(4) A national of a relevant accession State who legally works in the United Kingdom without interruption for a period of 12 months falling partly or wholly after 30th April 2004 shall cease to be an accession State worker requiring registration at the end of that period of 12 months.

(5) A national of a relevant accession State is not an accession State worker requiring registration during any period in which he is also a national of —

- (a) the United Kingdom;
- (b) another EEA State, other than a relevant accession State; or
- (c) Switzerland.

(6) A national of a relevant accession State is not an accession State worker requiring registration during any period in which he is —

- (a) a posted worker; or
- (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; or

(6) OJ No. C325, 24.12.02, p.51.

(iv) a student.

(7) For the purpose of this regulation —

- (a) a person working in the United Kingdom during a period falling before 1st May 2004 was legally working in the United Kingdom during that period if —
 - (i) he had leave to enter or remain in the United Kingdom under the 1971 Act for that period, that leave allowed him to work in the United Kingdom, and he was working in accordance with any condition on that leave restricting his employment; or
 - (ii) he was entitled to reside in the United Kingdom for that period under the 2000 Regulations without the requirement for such leave;
- (b) a person working in the United Kingdom on or after 1st May 2004 is legally working during any period in which he is working in the United Kingdom for an authorised employer;
- (c) a person shall also be treated as legally working in the United Kingdom on or after 1st May 2004 during any period in which he falls within paragraph (5) or (6).

(8) For the purpose of paragraphs (3) and (4), a person shall be treated as having worked in the United Kingdom without interruption for a period of 12 months if he was legally working in the United Kingdom at the beginning and end of that period and any intervening periods in which he was not legally working in the United Kingdom do not, in total, exceed 30 days.

(9) In this regulation —

- (a) “retired person” and “student” have the same meaning as in regulation 3 of the 2000 Regulations;
- (b) “posted worker” means a person whose employer is not established in the United Kingdom and who works for that employer in the United Kingdom for the purpose of providing services on his employer’s behalf;
- (c) “family member” means —
 - (i) in relation to a worker, his spouse and his children who are under 21 or dependent on him;
 - (ii) in relation to any other person, his spouse and his children who are dependent on him.

PART 2

Immigration

Amendment of the 2000 Regulations

3. In regulation 2(1) of the 2000 Regulations, for the definition of “EEA State” substitute —

““EEA State” means a Member State, other than the United Kingdom, or Norway, Iceland or Liechtenstein.”.

Right of residence of work seekers and workers from relevant acceding States during the accession period

4.—(1) This regulation derogates during the accession period from Article 39 of the Treaty establishing the European Community, Articles 1 to 6 of Regulation (EEC) No. 1612/68(7) on freedom of movement for workers within the Community and Council Directive (EEC) No. 68/360

(7) OJ L 257, 19.10.1968, p. 2.

on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families⁽⁸⁾.

(2) A national of a relevant accession State shall not be entitled to reside in the United Kingdom for the purpose of seeking work by virtue of his status as a work seeker if he would be an accession State worker requiring registration if he began working in the United Kingdom.

(3) Paragraph (2) is without prejudice to the right of a national of a relevant accession State to reside in the United Kingdom under the 2000 Regulations as a self-sufficient person whilst seeking work in the United Kingdom.

(4) An accession State worker requiring registration shall only be entitled to reside in the United Kingdom in accordance with the 2000 Regulations as modified by regulation 5.

Application of 2000 Regulations in relation to an accession State worker requiring registration

5.—(1) The 2000 Regulations shall apply in relation to an accession State worker requiring registration subject to the modifications set out in this regulation.

(2) An accession State worker requiring registration shall be treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the 2000 Regulations only during a period in which he is working in the United Kingdom for an authorised employer.

(3) Subject to paragraph (4), regulation 5(2) of the 2000 Regulations shall not apply to an accession State worker requiring registration who ceases to work.

(4) Where an accession State worker requiring registration —

(a) begins working for an authorised employer on or after 1st May 2004; and

(b) ceases working for that employer in the circumstances mentioned in regulation 5(2) of the 2000 Regulations during the one month period beginning on the date on which the work begins,

that regulation shall apply to that worker during the remainder of that one month period.

(5) An accession State worker requiring registration shall not be treated as an EEA national for the purpose of the power in regulation 10 of the 2000 Regulations (dependants and members of the household of EEA nationals)⁽⁹⁾ to issue a residence permit or a residence document to a relative of an EEA national or his spouse.

(6) An accession State worker requiring registration shall not be treated as a qualified person for the purpose of regulation 15 of the 2000 Regulations (issue of residence permits and residence documents).

Transitional provisions applying to the application of the 2000 Regulations to nationals of the accession States and their family members

6.—(1) Where before 1st May 2004 a qualified person or the family member of a qualified person has been given leave to enter or remain in the United Kingdom under the 1971 Act subject to conditions, those conditions shall cease to have effect on and after that date.

(2) Where before 1st May 2004 directions have been given for the removal of a qualified person or the family member of a qualified person under paragraphs 8 to 10A of Schedule 2 to the 1971 Act⁽¹⁰⁾ or section 10 of the 1999 Act, those directions shall cease to have effect on and after that date.

⁽⁸⁾ OJ L. 257, 19.10.1968, p.13.

⁽⁹⁾ Regulation 10(4) has been amended by regulation 5 of S.I. 2001/865.

⁽¹⁰⁾ Paragraphs 8 to 10 have been amended by the Schedule to the Immigration Act 1988 (c. 14), Schedule 2 to the Asylum and Immigration Act 1996 (c. 49), and Schedule 7 to the Nationality, Immigration and Asylum Act 2002(c. 41) and paragraph 10A was inserted by section 73 of the 2002 Act.

(3) Where before 1st May 2004 the Secretary of State has made a decision to make a deportation order against a qualified person or the family member of a qualified person under section 5(1) of the 1971 Act—

- (a) that decision shall, on and after 1st May 2004, be treated as if it were a decision under regulation 21(3)(b) of the 2000 Regulations; and
- (b) any appeal against that decision, or against the refusal by the Secretary of State to revoke the deportation order, made under section 63 of the 1999 Act or section 82(2)(j) or (k) of the 2002 Act before 1st May 2004 shall, on and after that date, be treated as if it had been made under regulation 29 of the 2000 Regulations.

(4) In this regulation—

- (a) “the 1999 Act” means the Immigration and Asylum Act 1999⁽¹¹⁾
- (b) “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;
- (c) regulation 6 of the 2000 Regulations shall apply for the purpose of determining whether a person is the family member of another person;
- (d) any reference to a qualified person or to the family member of a qualified person is a reference to a person who becomes for the purpose of the 2000 Regulations a qualified person or the family member of a qualified person, as the case may be, on 1st May 2004 by virtue of regulation 3.

PART 3

Accession State worker registration

Requirement for an accession State worker requiring registration to be authorised to work

7.—(1) By way of derogation from Article 39 of the Treaty establishing the European Community and Articles 1 to 6 of Regulation (EEC) No. 1612/68⁽¹²⁾ on freedom of movement for workers within the Community, an accession State worker requiring registration shall only be authorised to work in the United Kingdom for an authorised employer.

(2) An employer is an authorised employer in relation to a worker if —

- (a) the worker was legally working for that employer on 30th April 2004 and has not ceased working for that employer after that date;
- (b) the worker —
 - (i) during the one month period beginning on the date on which he begins working for the employer, applies for a registration certificate authorising him to work for that employer in accordance with regulation 8; and
 - (ii) has not received a valid registration certificate or notice of refusal under regulation 8 in relation to that application or ceased working for that employer since the application was made;
- (c) the worker has received a valid registration certificate authorising him to work for that employer and that certificate has not expired under paragraph (5); or
- (d) the employer is an authorised employer in relation to that worker under paragraph (3) or (4).

⁽¹¹⁾ 1999 c. 33.

⁽¹²⁾ OJ L 257, 19.10.1968, p. 2.

(3) Where a worker begins working for an employer on or after 1st May 2004 that employer is an authorised employer in relation to that worker during the one month period beginning on the date on which the work begins.

(4) Where a worker was, before 1st May 2004, issued with leave to enter the United Kingdom under the 1971 Act as a seasonal worker at an agricultural camp and the worker begins working for an employer on or after 1st May 2004 as a seasonal worker at such a camp, that employer is an authorised employer in relation to that worker during the period beginning on the date on which the work begins and ending on the date on which the worker ceases working for that employer, or on 31st December 2004, whichever is the earlier.

(5) A registration certificate —

- (a) is invalid if the worker is no longer working for the employer specified in the certificate on the date on which it is issued;
- (b) expires on the date on which the worker ceases working for that employer.

(6) Regulation 2(7)(a) shall apply for the purpose of determining whether a person is legally working on 30th April 2004 for the purpose of this regulation.

Registration card and registration certificate

8.—(1) An application for a registration certificate authorising an accession State worker requiring registration to work for an employer may only be made by an applicant who is working for that employer at the date of the application.

(2) The application shall be in writing and shall be made to the Secretary of State.

(3) The application shall state —

- (a) the name, address, and date of birth of the applicant;
- (b) the name and address of the head or main office of the employer;
- (c) the date on which the applicant began working for that employer;
- (d) where the applicant has been issued with a registration card, the reference number of that card.

(4) Unless the applicant has been issued with a registration card under paragraph (5), the application shall be accompanied by —

- (a) a registration fee of £50;
- (b) two passport size photographs of the applicant;
- (c) the applicant's national identity card or passport issued by the applicant's State;
- (d) a letter from the employer concerned confirming that the applicant began working for the employer on the date specified in the application.

(5) In the case of an application by an applicant who has not been issued with a registration card under this paragraph, the Secretary of State shall, where he is satisfied that the application is made in accordance with this regulation and that the applicant —

- (a) is an accession State worker requiring registration; and
- (b) began working for the employer on the date specified in the application,

send the applicant a registration card and a registration certificate authorising the worker to work for the employer specified in the application, and shall return the applicant's national identity card or passport.

(6) In the case of any other application, the Secretary of State shall, if he is satisfied as mentioned in paragraph (5), send the applicant a registration certificate authorising the worker to work for the employer specified in the application.

- (7) A registration card issued under paragraph (5) shall contain —
- (a) the name, nationality and date of birth of the applicant;
 - (b) a photograph of the applicant;
 - (c) a reference number.
- (8) A registration certificate issued under paragraph (5) or (6) shall contain —
- (a) the name of the applicant;
 - (b) the reference number of the applicant's registration card;
 - (c) the name and address of the head or main office of the employer, as specified in the application;
 - (d) the date on which the applicant began working for the employer, as specified in the application; and
 - (e) the date on which the certificate is issued.
- (9) Where the Secretary of State receives an application made in accordance with this regulation and he is not satisfied as mentioned in paragraph (5), he shall —
- (a) send the applicant a notice of refusal; and
 - (b) return any documents and fee that accompanied the application to the applicant.
- (10) Where the Secretary of State sends a registration certificate or notice of refusal to an applicant under this regulation he shall, at the same time, send a copy of the certificate or notice to the employer concerned at the address specified in the application for that employer.
- (11) Certificates and notices, and copies of these documents, sent under this regulation shall be sent by post.

Restriction on employers of relevant accession State workers requiring registration

9.—(1) Subject to paragraph (2), if an employer employs an accession State worker requiring registration during a period in which the employer is not an authorised employer in relation to that worker, the employer shall be guilty of an offence.

(2) Subject to paragraph (4), in proceedings under this regulation it shall be a defence to prove that —

- (a) there was produced to the employer during the one month period beginning on the date on which the worker began working for the employer a document that appeared to him to establish that the worker was not an accession State worker requiring registration; and
- (b) the employer took and retained a copy of that document.

(3) Subject to paragraph (4), in proceedings under this regulation it shall be a defence to prove that —

- (a) there was produced to the employer during the one month period beginning on the date on which the worker began working for the employer a document that appeared to him to establish that the worker had applied for a registration certificate in accordance with regulation 8 authorising the worker to work for that employer;
- (b) the employer took and retained a copy of that document; and
- (c) the employer has not received a copy of a registration certificate or notice of refusal in relation to that application.

(4) The defence afforded by paragraph (2) or (3) shall not be available in any case where the employer knew that his employment of the worker would constitute an offence under this regulation.

(5) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where an offence under this regulation committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in such a capacity,

he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(8) Where an offence under this regulation is committed by a partnership (other than a limited partnership) each partner shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(9) Paragraph (6) shall have effect in relation to a limited partnership as if —

- (a) a reference to a body corporate were a reference to a limited partnership; and
- (b) a reference to an officer of the body corporate were a reference to a partner.

(10) Section 28(1) of the 1971 Act (extended time limit for prosecution) shall apply in relation to an offence under this regulation.

(11) An offence under this regulation shall be treated as —

- (a) a relevant offence for the purpose of sections 28B and 28D of that Act⁽¹³⁾ (search, entry and arrest); and
- (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H⁽¹⁴⁾(search after arrest).

2004

Home Office Minister of State

⁽¹³⁾ Sections 28B was inserted by section 129 of the Immigration and Asylum Act 1999(c. 33) and 28D was inserted by section 131 of that Act; both sections have been amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002(c. 41).

⁽¹⁴⁾ Sections 28E, 28G and 28H were inserted by sections 132, 134 and 135 of the Immigration and Asylum Act 1999 respectively.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2000 (“the 2000 Regulations”) and establish a worker registration scheme for workers from eight of the States that are acceding to the European Union on 1st May 2004.

Part 1 of these Regulations (regulations 1 and 2) contain general provisions applicable to the Regulations. The Regulations will come into force on 1st May 2004 (*regulation 1(1)*). *Regulation 1(2) and 2* contain definitions of expressions used in the Regulations.

The amendments to the 2000 Regulations are contained in **Part 2 (regulations 3 to 6)**. On 1st May 2004, under the Accession Treaty signed at Athens on 16th April 2003, 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 will accede to the European Union. In general nationals of these States will have the same free movement rights as nationals of the existing Member States. The Accession Treaty provides, however, that existing Member States can, as a derogation from the usual position under European Community law, regulate access to their labour markets by nationals of the accession States (other than nationals of the Republic of Cyprus and the Republic of Malta). This derogation can be applied for a transitional period of five years from accession (with provision for a further two years in the case of disturbances to the labour markets). The existing Member States can derogate from the Community free movement rights of workers for this purpose during the transitional period.

Regulation 3 amends the definition of “EEA State” in regulation 2(1) of the 2000 Regulations so that it will include the accession States. This will extend the European Community free movement rights, transposed by the 2000 Regulations, to accession State nationals and their family members, subject to the qualifications made in relation to accession State workers.

Regulation 4 gives effect to the derogation provided for in the Accession Treaty to regulate access to the United Kingdom labour market by accession State nationals. Under regulation 4(2), nationals from the relevant accession States who come to the United Kingdom to seek work during the transitional period will not have a right to reside in the United Kingdom by virtue of that work seeker status. This is, however, without prejudice to their right to reside in the United Kingdom whilst looking for work if they are self-sufficient (regulation 4(3)). *Regulation 5* modifies the application of the 2000 Regulations to workers from the relevant accession States who are “accession State workers requiring registration”, as defined in regulation 2. Under regulations 5(2) to (4) such workers will generally only have a right of residence in the UK as workers under the 2000 Regulations during a period in which they are working for an employer for whom they are authorised to work under the workers registration scheme in Part 3 of these Regulations. Whilst they require registration neither they nor their family members will be entitled to a residence permit or document (regulations 5(5) and (6)).

Regulation 6 makes transitional provision to take account of the fact that on 1st May 2004 nationals from the accession States and their family members will fall to be treated under the 2000 Regulations for immigration purposes rather than under the Immigration Act 1971 regime.

Part 3 (regulations 7 to 9) sets out the accession State worker registration scheme, which will apply to accession State workers requiring registration. Under *regulation 7* workers requiring registration who are already in legal employment on 30th April 2004 can continue to work for the employer concerned without further registration. Workers requiring registration who begin work on or after 1st May 2004 have to apply, within one month of beginning working, for a registration certificate

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Accession (Immigration and Worker Registration) Regulations 2004 No. 1219*

authorising them to work for the employer concerned if they are to be authorised to work for that employer for more than a month. Special provision is made in regulation 7(4) in relation to seasonal agricultural workers until 31st December 2004. *Regulation 8* sets out the registration procedure. Workers requiring registration will be issued with a registration card and a registration certificate authorising them to work for the employer concerned. A fee of £50 will be charged for the first registration to cover the administrative costs of registration. *Regulation 9* makes it an offence for an employer to employ a worker who is not authorised under the registration scheme to work for that employer.