

2005 No. 47

IMMIGRATION

**The Immigration (European Economic Area) (Amendment)
Regulations 2005**

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| <i>Made</i> - - - - | <i>11th January 2005</i> |
| <i>Laid before Parliament</i> | <i>17th January 2005</i> |
| <i>Coming into force</i> - - | <i>7th February 2005</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 upon 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) (Amendment) Regulations 2005 and shall come into force on 7th February 2005.

Amendment of Immigration (European Economic Area) Regulations 2000

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

(2) For regulation 11(2)(b) there is substituted –

“(b) the family member of the United Kingdom national is lawfully resident in an EEA State;”.

(3) In regulation 13(1)(b)(i), for “a year” there is substituted “six months”.

(4) After regulation 13(2), there is inserted –

“(3) Paragraph (1) also does not apply if the applicant applies for a family permit in an EEA State and is not lawfully resident in any EEA State.”.

(5) Regulation 30(3)(a) is omitted.

Transitional provision

3.—(1) Where an application is made by the family member of a United Kingdom national for a family permit under regulation 13 of the 2000 Regulations or for a residence document under

(a) S.I. 2000/1813.

(b) 1972 c. 68.

(c) 2002 c. 41.

(d) S.I. 2000/2326, amended by S.I. 2001/865, S.I. 2003/549, S.I. 2003/3188 and S.I. 2004/1236.

regulation 15 of the 2000 Regulations, regulation 2(2) has effect only in relation to applications made after these Regulations come into force.

(2) Regulation 2(3) and (4) have effect only in relation to an application for a family permit made under regulation 13 of the 2000 Regulations after these Regulations come into force.

(3) Regulation 2(5) has effect only in relation to a person who appeals under regulation 29 of the 2000 Regulations after these Regulations come into force.

Home Office
11th January 2005

Des Browne
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make three changes to the Immigration (European Economic Area) Regulations 2000 (S.I. 2000/2326 as amended) (the “2000 Regulations”).

Regulation 2(2) removes the existing provision in the 2000 Regulations which states that the family member of a United Kingdom national who moves to another Member State and subsequently returns to the United Kingdom may not gain rights of residence and entry to the United Kingdom under the 2000 Regulations if the United Kingdom national left the United Kingdom in order for his family member to acquire rights under the 2000 Regulations. A new provision is substituted which provides that the family member of a United Kingdom national who moves to another Member State and returns to the United Kingdom must be lawfully resident in an EEA State if he is to gain rights of entry to and residence in the United Kingdom. These changes reflect the judgment of the European Court of Justice in the case of *Akrich* (Case C-109/01).

Regulation 2(3) changes the period within which the family member of an EEA national must intend to travel to the United Kingdom with the EEA national, in order to qualify for a family permit, from one year of the date of the application to six months.

Regulation 2(4) provides that a person who applies for a family permit in an EEA State must be lawfully resident in an EEA State in order to qualify. This change also reflects the judgment of the European Court of Justice in *Akrich*.

Regulation 2(5) removes regulation 30(3)(a) of the 2000 Regulations so that a person appealing to the Special Immigration Appeals Commission under the 2000 Regulations does not automatically have the right to appeal whilst he is in the United Kingdom. Whether or not an appellant can appeal in the United Kingdom will now depend on the nature of the appeal. This brings the 2000 Regulations into line with the rule set out for other appeals in section 2(5) of the Special Immigration Appeals Commission Act 1997.

Regulation 3 makes transitional provision, ensuring that the changes only take effect in relation to applications and appeals made after these Regulations come into force.

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