

2007 No. 617

TERMS AND CONDITIONS OF EMPLOYMENT

**The European Communities (Employment in the Civil Service)
Order 2007**

Made - - - - - *6th March 2007*

Coming into force - - - - - *7th March 2007*

At the Court at Buckingham Palace, the 6th day of March 2007

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 2(2) of, and paragraph 2(2) of Schedule 2 to, the European Communities Act 1972(a) a draft of this Order was laid before and approved by a resolution of each House of Parliament.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2(2) of that Act, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation and commencement

1. This Order may be cited as the European Communities (Employment in the Civil Service) Order 2007 and shall come into force on the day after it is made.

Amendment of the Aliens' Employment Act 1955

2.—(1) Amend the Aliens' Employment Act 1955(b) as follows.

(2) In subsection (1) of section 1 (provision for civil employment of aliens), for paragraph (c) substitute "(c) if he is a relevant European and he is not employed in a reserved post;"

(3) After subsection (4) of that section insert—

"(5) In subsection (1)(c) "a relevant European" means—

(a) 1972 c.68; by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). Also, by virtue of the European Communities (Definition of Treaties)(Agreement between the European Community and its Member States and the Swiss Confederation on the Free Movement of Persons) Order 2000 (S.I.2000/3269) made pursuant to section 1(3) of the European Communities Act, regulations made under section 2(2) of the European Communities Act may also implement obligations of the United Kingdom created or arising by or under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons signed at Luxembourg on 21st June 1999, and which came into force on 1st June 2002 (Cm 5639).

(b) 1955 c.18. Section 1 was amended by S.I. 1991/1221.

- (a) a national of a EEA State or a person who is entitled to take up any activity as an employed person in the United Kingdom by virtue of Article 23 of Council Directive 2004/38/EEC^(a) (right of family members of nationals of EEA States to take up employment where that national is employed);
 - (b) a Swiss national or a person who is entitled to take up any activity as an employed person in the United Kingdom by virtue of Article 7(e) and Article 3(5) of Annex 1 of the Agreement between the European Community and its member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons signed at Luxembourg on 21st June 1999^(b) (right of spouses and certain family members of Swiss nationals to take up economic activity, whatever their nationality); or
 - (c) a person who is entitled to take up any activity as an employed person in the United Kingdom by virtue of Article 6(1) or 7(1) (rights of certain Turkish nationals and their family members to take up any economic activity, whatever their nationality) of Decision 1/80 of 19 September 1980 of the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963^(c).
- (6) In subsection (1)(c) “a reserved post” means—
- (a) a post in the security and intelligence services; or
 - (b) a post falling within subsection (7) or (8) which the responsible Minister considers needs to be held otherwise than by a relevant European.
- (7) The posts falling within this subsection are—
- (a) a post in Her Majesty’s Diplomatic Service and posts in the Foreign and Commonwealth Office; and
 - (b) posts in the Defence Intelligence Staff.
- (8) The posts falling within this subsection are posts whose functions are concerned with—
- (a) access to intelligence information received directly or indirectly from the security and intelligence services;
 - (b) access to other information which, if disclosed without authority or otherwise misused, might damage the interests of national security;
 - (c) access to other information which, if disclosed without authority or otherwise misused, might be prejudicial to the interests of the United Kingdom or the safety of its citizens; or
 - (d) border control or decisions about immigration.
- (9) In this section “the security and intelligence services” means—
- (a) the Security Service;
 - (b) the Secret Intelligence Service; and
 - (c) the Government Communications Headquarters.”.

Amendment of the European Communities (Employment in the Civil Service) Order 1991

3.—(1) Amend the European Communities (Employment in the Civil Service) Order 1991^(d) as follows.

(a) OJ No L 158/77 30.04.2004, p.35
 (b) (Cm 5639)
 (c) OJ No L 361/1 31.12.77, p.29
 (d) S.I. 1991/1221

(2) In article 3 (employment of aliens in the Northern Ireland Civil Service), omit the words after “Northern Ireland” and substitute “if he is a relevant European and he is not employed in a reserved post.”.

(3) After article 3 insert —

“4. In this Order “a relevant European” means—

- (a) a national of a EEA State or a person who is entitled to take up any activity as an employed person in the United Kingdom by virtue of Article 23 of Council Directive 2004/38/EEC^(a) (right of family members of nationals of EEA States to take up employment where that national is employed);
- (b) a Swiss national or a person who is entitled to take up any activity as an employed person in the United Kingdom by virtue of Article 7(e) and Article 3(5) of Annex 1 of the Agreement between the European Community and its member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons signed at Luxembourg on 21st June 1999^(b) (right of spouses and certain family members of Swiss nationals to take up economic activity, whatever their nationality); or
- (c) a person who is entitled to take up any activity as an employed person in the United Kingdom by virtue of Article 6(1) or 7(1) (rights of certain Turkish nationals and their family members to take up any economic activity, whatever their nationality) of Decision 1/80 of 19 September 1980 of the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963^(c).

5. In this Order “a reserved post” means a post falling within article 6 which the Secretary of State considers needs to be held otherwise than by a relevant European.

6. The posts falling within this article are posts whose functions are concerned with—

- (a) access to intelligence information received directly or indirectly from the security and intelligence services;
- (b) access to other information which, if disclosed without authority or otherwise misused, might damage the interests of national security;
- (c) access to other information which, if disclosed without authority or otherwise misused, might be prejudicial to the interests of the United Kingdom or the safety of its citizens; or
- (d) border control or decisions about immigration.

7. In this Order “the security and intelligence services” means—

- (a) the Security Service;
- (b) the Secret Intelligence Service; and
- (c) the Government Communications Headquarters.”.

Christine Cook
Deputy Clerk of the Privy Council

(a) OJ No L 158/77 30.04.2004, p.35
(b) (Cm 5639)
(c) OJ No L 361/1 31.12.77, p.29

EXPLANATORY NOTE

(This note is not part of the Order)

The Treaty establishing the European Community, in particular Article 39, requires member States to secure freedom of movement for workers within the European Union. However, Article 39(4) permits member States to reserve employment in the ‘public service’ to their own nationals.

The European Communities (Employment in the Civil Service) Order 1991 (S.I. 1991/1221) provided for the opening up of employment in the civil service to nationals of member States of the European Communities, and certain members of their families, in posts other than posts in the public service within the meaning of Article 48(4) E.E.C Treaty (now Article 39(4)).

The Order amends section 1(1)(c) of the Aliens’ Employment Act 1955. Specifically, it broadens the category of person who may be employed in the Civil Service to include “a relevant European”. The expression “a relevant European” is defined as including nationals of an EEA state, Swiss nationals and Turkish nationals, as well as specified members of the families of such persons. The Order also defines the posts (“reserved posts”) which should be reserved to persons other than “a relevant European”.

The Order makes similar amendments to article 3 of the European Communities (Employment in the Civil Service) Order 1991 (S.I. 1991/1221) in relation to employment in the Northern Ireland Civil Service.

£3.00

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E0353 3/2007 170353T 19585