

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (EUROPEAN ECONOMIC AREA) REGULATIONS 2006
2006 No. 1003

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
 - 2.1 These Regulations implement in domestic law Directive 2004/38/EC of the European Parliament and the Council of 29 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 (“the Directive”). The Directive governs movement rights between Member States.
 - 2.2 This Directive amends Regulation (EEC) No 1612/68 and repeals 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. These repealed Directives were implemented by the Immigration (European Economic Area) Regulations 2000, as amended (“the 2000 Regulations”). The 2000 Regulations are repealed and replaced by these Regulations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 Article 18 (ex article 8a) of the Treaty of Rome as amended by the Treaty of Nice provides for a right of residence and movement of Union citizens throughout the European Union. Directive 2004/38/EC sets out the terms of the limits of this right of movement and is a consolidation and modernisation of existing European Community secondary legislation in this area. The deadline for implementation is 30 April 2006.
 - 4.2 As with the previous legislation covering the right of movement these Regulations are made under Section 2(2) of the European Communities Act 1972 and section 109 of Nationality, Immigration and Asylum Act 2002.
 - 4.3 The Directive cleared Parliamentary scrutiny in the House of Commons on 7 September 2003 and in the House of Lords in 17 September 2003.
 - 4.4 A Transposition Note has been prepared and is annexed hereto. The Regulations follow the structure of the 2000 Regulations, which they repeal and replace. As was the case in the 2000 Regulations, terms have been defined in Part 1 of the Regulations covering categories of persons who are referred to in the Directive. These defined terms have then been used in the rest of the

Regulations when setting out who has a right to be admitted to the UK, to reside in the UK and to be issued with residence documentation. Thus, for example, regulation 10 defines “family member who has retained the right of residence”, a category of persons referred to in Articles 12 and 13 of the Directive. This has involved some restructuring and redrafting of the Directive text although the verbatim text of the Directive has been used whenever it is considered that the Directive text should not be redrafted. For example regulation 10(5)(d)(iv) refers to “particularly difficult circumstances, such as he or another family member having been a victim of domestic violence”, which is largely a repetition from Article 13(2)(c) of the Directive.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Directive 2004/38/EC is based on the provisions of the repealed Directives mentioned in paragraph 2.2 but it also contains new provisions, some of which reflect the case law of the European Court of Justice relating to 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 three months in a host Member State for EU nationals and their family members provided they have an identity card or passport (or a passport in the case of third country national family members) and 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 person, student, service provider or self sufficient person 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 by an individual, provided that during this period they have been exercising a Treaty right;
- (d) a new suite of documentation to provide confirmation of status in the United Kingdom when exercising Treaty rights for EU nationals and their third country national family members.

- 7.2 As was the case with the 2000 Regulations, the principles of Directive 2004/38/EC will be extended to nationals of Norway, Iceland and Liechtenstein. We have also been informed by the Commission that these three states (all members of the European Free Trade Association States (EFTA)) have yet to agree to implement the Directive. The Commission's advice is that they will be required to do so in order to comply with the terms of the agreement between the EU and EFTA on what constitutes the EEA. These Regulations therefore apply to them and their family members.
- 7.3 Part 1 of the Regulations contains the interpretation provisions for the Regulations.
- 7.4 Part 2 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);
 - (ii) the right of EEA nationals and their family members to reside in the United Kingdom for an initial period of three months (regulation 13);
 - (iii) the right of a 'qualified person' (a jobseeker, worker, self-employed person, self-sufficient person or student), a family member of 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)).
- 7.5 Part 3 provides for the issue of residence documentation, which can be used as proof of the rights of residence provided for in the Regulations. These documents are as follows:
- (i) a registration certificate, issued to EEA nationals who are exercising Treaty rights (regulation 16).
 - (ii) a residence card, issued to the third country national family members of an EEA national who is exercising a Treaty right (regulation 17).
 - (iii) a document certifying permanent residence, issued to EEA nationals who have been residing in the UK for five years or more exercising a Treaty right (regulation 18).
 - (iv) a permanent residence card, issued to the third country national family members of EEA nationals, when they have resided in the

UK for five years with an EEA national, who, during that five year period has been exercising a Treaty right (regulation 18).

- 7.6 Documentation is issued to EEA nationals on application; there is no requirement to hold a registration certificate or permanent residence documentation to reside in the UK lawfully. Third country national family members of an EEA national residing in the UK for more than three months may apply for a residence card. This card will enable them to produce evidence of status in UK to an employer enabling the employer to comply with UK illegal working legislation. Those who qualify for a permanent residence card will be able to use that document to confirm status in the United Kingdom.
- 7.7 Part 4 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. Regulations 19 to 21 set out the terms on which exclusion and removal are considered and are broadly comparable to the regime they replace. The principal changes are the setting out of a more explicit consideration of the length of time an individual has resided in the United Kingdom and the extent of their social and cultural integration into the United Kingdom. This reflects case law developed by rulings in the European Court of Justice. The Directive permits the removal of a person on imperative grounds of public security in circumstances defined by the United Kingdom (Regulation 21(4)).
- 7.8 Part 5 contains procedural provisions relating to persons who claim admission under the Regulations, who are refused admission or who are being removed.
- 7.9 Part 6 and Schedule 1 set out the appeal rights in relation to decisions taken under the Regulations. This is broadly comparable to the existing appeal rights for EEA nationals and their family members. An in country right of appeal is normally provided for when a decision could lead to the removal of the individual in question, there are provisions for out of country appeal rights in the case of those not in the United Kingdom and those who have entered with an extant deportation order (Regulation 27).
- 7.10 Schedule 2 deals with the effect of the Regulations on other legislation.
- 7.11 Schedule 3 lists Regulations that are being repealed by the new Regulations. Schedule 4 contains transitional provisions to ensure that there is a smooth transition from the 2000 Regulations to these Regulations. Schedule 5 contains consequential amendments which are required by the replacement of the 2000 Regulations with these Regulations.
- 7.12 In addition to EEA nationals, the Regulations have also been applied to nationals from Switzerland and their family members so as to avoid having to apply a slightly different free movement regime to such nationals and family members. The Swiss free movement agreement is not automatically amended by this Directive. For operational effectiveness we wish to provide the same rights for Swiss nationals as given to EEA nationals in these regulations. Operationally it would be very difficult to attempt to run two EEA regimes

conferring very similar rights. EFTA and Swiss nationals constitute a very small percentage of overall caseload.

- 7.13 As was the case of the 2000 Regulations, these Regulations therefore apply to nationals from other Member States, Norway, Iceland, Liechtenstein and Switzerland (defined for the purposes of the Regulations as “EEA nationals”) and their family members.

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.
- 8.2 The impact of these Regulations on the public sector is not anticipated to be different from the impact of the 2000 Regulations. This is because both these Regulations and the 2000 Regulations, which they replace, make similar provision for an immigration scheme for EEA nationals and their family members. As with the 2000 Regulations, these Regulations will be implemented by the Immigration and Nationality Directorate of the Home Office together with the Immigration Service. There should be no additional impact on the public sector.

9. Contact

Clinton Nield at the Home Office Tel: 020 8760 8381 or e-mail:
Clinton.Nield2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

DIRECTIVE 2004/38/EC – TRANSPOSITION NOTE

Article of the Directive	Objective	Implementation	Responsibility
Article 1	Subject		
1	Lays down subject of Directive.	<i>No action required.</i> Unless otherwise stated, this Directive will be implemented by the Immigration (European Economic Area) Regulations 2006. References to regulations in this Note are to the regulations of this instrument.	Throughout the Directive, the Secretary of State for the Home Department is responsible for implementation unless stated otherwise.
Article 2	Definitions		
2(1)	Definition of a ‘ <i>Union Citizen</i> ’.	<i>Regulation 2</i> In <i>Regulation 2(1)</i> Union Citizen is replaced by reference to a European Economic Area (“EEA”) national (of an “EEA State”) as defined.	
2(2)	Definition of a ‘ <i>Family Member</i> ’.	<i>Regulation 7</i>	
2(3)	Definition of a ‘ <i>host Member State</i> ’.	<i>Regulation 2</i> The meaning has been expanded to include EEA States so that the definition is: (a) a Member State other than the United Kingdom; (b) Norway, Iceland or Liechtenstein; (c) Switzerland The basis for this expansion is set out in the Explanatory Note to the Regulations and in the Explanatory Memorandum.	
Article 3	Beneficiaries		
3(1)	Directive applies to all Union citizens who move to or reside in the host Member State and their family members who accompany/join them.	<i>Regulation 2 and 7</i>	
3(2)	Facilitate entry and residence for the following persons:	<i>Regulation 8</i>	

Article of the Directive	Objective	Implementation	Responsibility
	<p><i>i)</i> Any family members who are dependants or members of the household of the Union Citizen or where health grounds require the personal care of the family member by the Union citizen.</p> <p><i>ii)</i> Partner with whom Union citizen has a durable relationship.</p> <p>Host Member State can deny entry of residence to these people after undertaking an extensive examination of the personal circumstances.</p>	<p>Defined as “Extended Family Member” which means a person who is not a family member of an EEA national under <i>Regulation 7</i>, but who satisfies certain conditions defined in <i>Regulation 8(2) to 8(6)</i>.</p> <p><i>Regulation 8(2) and (3)</i></p> <p><i>Regulation 8(5)</i></p> <p><i>Regulation 12(3)</i></p>	
Article 4	Right of exit		
4	Right of exit	Persons seeking to leave the UK who hold a valid ID card or passport do not require an exit visa under national law. UK nationals may apply to the UK Passport Service for a passport which will be valid in all Member States. Accordingly, no legislative implementation is necessary.	
Article 5	Right of entry		
5(1)	<p>To grant Union citizens leave to enter a Member State’s territory with a valid ID card or passport.</p> <p>Right of non-national family members to have leave to enter with a valid passport.</p>	<p><i>Regulation 11(1)</i></p> <p>An EEA national must be admitted to the UK if he produces on arrival a valid national identity card or passport issued by an EEA State.</p> <p><i>Regulation 11(2)</i></p> <p>A person who is not an EEA national must be admitted to the UK if he is a family member of an EEA national, a family member who has retained the right of</p>	

Article of the Directive	Objective	Implementation	Responsibility
	Prohibits imposing entry visa or equivalent formality on Union citizens.	<p>residence or a person with a permanent right of residence under <i>Regulation 15</i> and produces on arrival:</p> <p>(a) a valid passport; and</p> <p>(b) an EEA family permit [a form of entry clearance], a residence card [provided for in <i>Regulation 17</i>] or a permanent residence card [provided for in <i>Regulation 18</i>].</p> <p>This is a consequence of the above provisions.</p>	
5(2)	<p>Non-national family members need only have an entrance visa (in accordance with Regulation (EC) No. 539/2001 or national law). Possession of valid residence card (Article 10) exempts family members from this requirement.</p> <p>Such visas, if required, shall be granted free of charge and as soon as possible via accelerated procedures.</p>	<p><i>Regulation 11 (2)</i> concerns the right of admission. See above.</p> <p><i>Regulation 12</i> provides for the issue of an EEA Family Permit.</p> <p><i>Regulation 12(4)</i></p> <p>An EEA family permit issued under this regulation shall be issued free of charge and as soon as possible.</p>	
5(3)	Prohibits Member States from stamping passports of family members (who are non Member State nationals) provided that they present a residence card (as required by Article 10).	<i>Regulation 11(3)</i>	
5(4)	To give Union citizens and family members every reasonable opportunity to obtain necessary documents within a reasonable period of time or to otherwise prove that they are covered by the right of free movement and residence.	<i>Regulation 11(4)</i>	
5(5)	Allows Member States to submit the person to proportionate and non-discriminatory sanctions if they do not report their presence within the Member States' territory within a	No action required.	

	reasonable and non-discriminatory period of time.		
Article 6	Right of residence for up to 3 months		
6(1)	Gives Union citizens a right of residence for up to three months without any conditions or formalities other than requirement to hold an ID card/passport.	<i>Regulation 13(1)</i>	
6(2)	To apply Article 6(1) to non Member State national family members who are accompanying or joining the Union citizen.	<i>Regulation 13(2)</i>	
Article 7	Right of residence for more than 3 months		
7(1)	<p>Gives the right of residence to all Union citizens for longer than three months if:</p> <p><i>a)</i> they are workers/self-employed in the host Member State; or</p> <p><i>b)</i> have sufficient resources to be self-sufficient & have comprehensive sickness insurance cover (for themselves and any accompanying family member); or</p> <p><i>c)</i> are enrolled at a private/public establishment accredited by host Member State, for the principal purpose of study and have satisfied <i>b)</i>.</p> <p><i>d)</i> are family members of Union citizens who have satisfied <i>a)</i>, <i>b)</i> or <i>c)</i>.</p>	<p><i>Regulation 14(1)</i> with reference to <i>Regulation 6(1)</i> (being the definition of qualified person).</p> <p>A qualified person is defined as:</p> <p>(a) a jobseeker;</p> <p>(b) a worker;</p> <p>(c) a self-employed person;</p> <p>(d) a self-sufficient person; or</p> <p>(e) a student.</p> <p>A qualified person is entitled to reside in the UK for so long as he remains a qualified person.</p> <p><i>Regulation 14(2) and Regulation 7(1) and (2)</i></p>	
7(2)	The right of residence in Article 7(1) extends to family members who are not nationals of a Member State, but who accompany or join the Union Citizen provided that Union citizen fulfils Article 7(1) a), b) or c).	<i>Regulation 14(2) and Regulation 7(1) and (2)</i>	
7(3)	<p>Non-working union citizen shall retain the status of a worker if:</p> <p><i>a)</i> he/she is temporarily unable to work as a result of an illness or accident.</p> <p><i>b)</i> & <i>c)</i> he/she is in involuntary unemployment after having being employed for more than a year and is a registered job seeker.</p>	<i>Regulation 5</i>	

	d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the vocational training must be related to the previous employment.		
7(4)	Only the spouse, the registered partner and dependant children shall have right of residence as long as Union citizen meets conditions under Article 7(1) c) above (i.e. a student).	<i>Regulation 7(2)</i>	
Article 8	Administrative formalities for Union Citizens		
8(1)	For periods of residence longer than three months, the host Member State may require Union citizens to register with relevant authorities.	No action required. The Secretary of State will not require this but a person may apply for a registration certificate (and the relevant provisions are described below).	
8(2) and (3)	<p>Deadline for registration may not be less than three months from date of arrival. Registration certificate (stating name, address and date) should be issued immediately.</p> <p>For registration certificate, Member States may only require:</p> <ol style="list-style-type: none"> 1. Article 7(1) a) persons to present a valid ID card/passport, confirmation of working from employer/certificate of employment, or proof that they are self employed. 2. Article 7(1) b) persons to present a valid ID card/passport and provide proof that they satisfy the conditions laid down therein. 3. Article 7(1) c) persons to present a valid ID card/passport, proof of enrolment at an accredited establishment and proof of comprehensive sickness insurance cover and a declaration as to sufficient resources. 	<i>Regulation 16(1) and (2)</i>	
8(4)	The definition of the amount of 'sufficient resources'	<i>Regulation 4(4)</i> The resources of the person concerned and, where applicable, any family members are to be	

		regarded as sufficient if they exceed the maximum level of resources which a UK national and his family members may possess if he is to become eligible for social assistance under the UK benefit system.	
8(5)	For a registration certificate for Member State family members, the following may be required where appropriate; <ol style="list-style-type: none"> 1. A valid ID card or passport 2. Document attesting to the existence of a family relationship. 3. The registration certificate of the person that they are joining. 4. Proof that they are a family member. 5. Document issued by relevant authority in the country of origin. 	<i>Regulation 16(3)</i>	
Article 9	Administrative formalities for family members who are not nationals of a Member State.		
9(1)	Member States shall issue residence cards to non Member State family members where planned residence is greater than three months.	<i>Regulation 17(1) and (2)</i>	
9(2)	Deadline for submitting a residence card application may not be less than three months from date of arrival.	No action required. The Secretary of State has not set a deadline. However, a person can only apply for such a card if he/she qualifies for an extended right of residence (under <i>Regulation 14(2)</i>).	
9(3)	Proportionate and non-discriminatory sanction for those who fail to comply with residence card requirements.	No action required. The Secretary of State will not require such sanctions.	
Article 10	Issue of residence cards		
10(1)	Non Member State national family members shall prove their residence with a document called ' <i>Residence Card of a family member of a Union citizen</i> ' which shall be issued no later than six months from date of submission of application. Certificate of application must be issued immediately.	<i>Regulation 17(3)</i>	
10(2)	To issue a residence card, Member States shall require: <ol style="list-style-type: none"> 1. Valid Passport 	<i>Regulation 17(1) and (3)</i>	

	<ol style="list-style-type: none"> 2. Document attesting familial relationship 3. Registration certificate or any other proof of residence in the host Member State of the Union Citizen whom they are accompanying. 4. In cases falling under Article 2(2), documentary evidence that the criteria are met. 5. In cases falling under Article 3(2)(a), document showing country from which they are arriving certifying they are dependants of the household of the Union citizen or proof that they require personal care of the Union Citizen on serious health grounds. 	<i>Regulation 17(4) and (5)</i>	
Article 11	Validity of residence cards		
11(1)	Residence card provided (Article 10(1)) shall be valid for 5 years or for the envisaged period of residence of the Union citizen if less than 5 years.	<i>Regulation 17(6)</i>	
11(2)	Validity of residence card not affected by certain types of absence.	The Secretary of State has taken the approach that provisions on continuity of stay apply to the general right to reside. This has been provided for, in respect of family members, by <i>regulation 3 and regulation 15(1)</i> .	
Article 12	Retention of right of residence by family members in the event of death or departure of the Union Citizen		
12(1)	<p>The Union Citizen's death or departure from Member State shall not affect right of residence of his/her family members who are nationals of a Member State.</p> <p>Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Art 7 (1).</p>	<p><i>Regulation 10(2) and 10(3)</i></p> <p><i>Regulation 15(1)(f)</i></p>	
12(2)	Non Member State nationals who are family members of a Union Citizen who subsequently dies shall not lose their right of residence as long as they were residing in the host Member State as family members for	<i>Regulation 10(2)</i>	

	<p>at least one year before the Union Citizens death.</p> <p>Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Art 7 (1).</p>	<i>Regulation 15(1)(f)</i>	
12(3)	<p>Unions citizen's death or departure from host Member State shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children irrespective of nationality, if the children reside and are enrolled at an educational establishment in the host Member State for the purpose of studying there until the end of their studies.</p>	<i>Regulation 10(3) and 10(4), Regulation 14(3)</i>	
Article 13	Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership		
13(1)	<p>Divorce, annulment of the Union Citizens marriage or termination of his/her registered partnership shall not affect the right of his/her family members who are nationals of a Member State.</p> <p>Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Art 7 (1).</p>	<p><i>Regulation 10(5) and 14(3)</i></p> <p><i>Regulation 15(1)(f)</i></p>	
13(2)	<p>Non Member State national family members shall not lose their right of residence due to divorce, annulment of marriage or termination of the registered partnership where:</p> <ul style="list-style-type: none"> a) prior to the initiation of divorce or annulment proceedings or termination of the registered partnership, the marriage or registered partnership has lasted three years (at least one year in Member State); or b) by agreement between the spouses or the partners or by court order, the spouse or partner who is not a national of a Member State has custody of the Union Citizens 	<i>Regulation 10(5)</i>	

	<p>children; or</p> <p>c) this is warranted by particular difficult circumstance (e.g. victim of domestic violence whilst marriage is subsisting); or</p> <p>d) by agreement between the spouses or the partners or by court order, the non-national spouse or partner has right of access to minor child, provided that the court has ruled that access must be in the Member State.</p> <p>Before gaining permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers, self-employed persons or that they have sufficient resources not to become a burden on the Member State's social assistance system. Or, that they are the family members of someone who satisfies these requirements.</p>	<i>Regulation 15(1)(f)</i>	
Article 14	Retention of right of residence		
14(1)	Union citizens and family members shall have right of initial residence (Article 6) as long as they do not become an unreasonable burden on the social assistance system of the host Member State.	<i>Regulation 13(3)(b)</i>	
14(2)	Union citizens and their family members shall retain the right of residence (under Articles 7, 12, 13) as long as they meet conditions set out therein. Only where there is a reasonable doubt whether a Union citizen or family member fulfils conditions in above Articles may a Member State verify if these conditions are fulfilled.	<i>Regulation 14</i>	
14(3)	A Member State shall not automatically expel a Union Citizen or family member because of his/her recourse to the social assistance system.	<i>Regulation 19(4)</i>	
14(4)	An expulsion order can never be adopted against Union citizens or their family members where:	<i>Regulation 6</i> provides that (1)(a) a jobseeker (by reference to subparagraph (4)); (b) a worker; (c) a	

	<p>i) Union Citizens are workers or self employed persons;</p> <p>ii) Union Citizens entered territory to seek employment.</p> <p>Union citizens can not be expelled as long as they can provide evidence that they are continuing to seek employment and have a genuine chance of being engaged.</p>	<p>self-employed person are defined as qualified persons. <i>Regulation 6(2) and (3)</i> provides the circumstances in which a person continues to be a worker or self-employed person when he or she is not working. Whilst the person remains a qualified person, he or she has a right to reside (see <i>Regulation 14(1)</i> and may not be removed unless that right ceases (see <i>Regulation 19(3)</i>).</p> <p>Similar provision is made in respect of family members of such qualified persons by <i>Regulation 7, 8, 14(2) and 19(3)</i>.</p>	
Article 15	Procedural safeguards		
15(1)	Procedures provided by Article 30 & 31 shall apply to all decisions restricting free movement of Union Citizens and their family members on grounds other than public policy, public security or public health.	<i>Regulation 2(1)</i> defines an “EEA Decision” and <i>Regulation 26</i> sets out the rights of appeal for a person seeking to challenge such a decision.	
15(2)	Expiry of the ID Card/Passport of person concerned shall not constitute a ground for expulsion if person was issued with registration certificate or residence card.	The only grounds of exclusion and removal from the United Kingdom are set out in <i>Regulation 19</i> .	
15(3)	Host Member State may not impose a ban on entry in the context on an expulsion decision to which Article 15(1) applies.	The only grounds of exclusion and removal from the United Kingdom are set out in <i>Regulation 19</i> .	
CHAPTER IV – RIGHT OF PERMANENT RESIDENCE			
SECTION I – ELIGIBILITY			
Article 16	General rule for Union citizens and their family members		
16(1)	Union Citizens who have resided continuously for a period of five years in a host Member State shall have a right of permanent residence.	<i>Regulation 15(1)(a)</i>	
16(2)	The Article 16(1) right also applies to non Member State family members who have resided with the union Citizen in the host Member State for a continuous period of 5 years.	<i>Regulation 15(1)(b)</i>	
16(3)	Continuity of residence is not affected by: <ul style="list-style-type: none"> a) temporary absence not exceeding 6 months. b) longer absences due to military 	<i>Regulation 3</i>	

	<p>service.</p> <p>c) one absence of a maximum of 12 consecutive months for important reasons such as pregnancy, childbirth, serious illness, study/vocational training, or posting in another Member State or third country.</p>		
16(4)	Right of permanent residence (once acquired) will only be lost after absence of over two years from host Member State.	<i>Regulation 15(2)</i>	

Article 17	Exemptions for persons no longer working in the host Member State and their family members.		
17(1)	<p>Right of permanent residence in host Member State shall be enjoyed before continuous residence of 5 years by:</p> <p>(a) workers or self-employed persons who (at the time they stop working) have reached the legal retirement age for entitlement to an old age pension, or those who take early retirement but have been working in the past 12 months and have resided continuously for 3 years. If the host Member State does not grant the right to an old age pension to certain categories of self-employed persons, then age condition will be met once person turns 60.</p> <p>(b) workers or self-employed persons who have resided continuously in the host Member State for more than two years and stopped working as a result of permanent incapacity to work. If the incapacity is due to an incident at work or occupational disease entitling the person concerned to a benefit payable by the Member State (part or in full), no condition of length of residence will be imposed.</p> <p>(c) workers or self-employed persons who, after three years continuous employment and</p>	<p><i>Regulation 5(1) and Regulation 15(1)(c)</i></p> <p><i>Regulation 5(1) and Regulation 15(1)(c)</i></p> <p><i>Regulation 5(1) and Regulation 15(1)(c)</i></p>	

	<p>residence in host Member State, work in another Member State, but return to their place of residence in the host Member State at least once a week.</p> <p>For the purposes of rights referred to in (a) and (b), periods of employment spent in a Member State by the person concerned shall be regarded as having been spent in the host Member State.</p>	<i>Regulation 5(5)</i>	
17(2)	<p>Conditions of length of residence and employment laid down in Article 17(1)(a) and (b) shall not apply if the workers or self employed person's spouse or partner is a national of the host Member State and has lost their nationality of that Member State by marriage to that worker/self employed person.</p>	<i>Regulation 5(6)</i>	
17(3)	<p>If the worker/self-employed person has acquired a permanent right of residence, then the family members of that person (who are residing with him/her) shall have a permanent right of residence in that Member State.</p>	<i>Regulation 15(1)(d)</i>	
17(4)	<p>If the worker/self-employed person dies whilst working (and not having acquired a permanent right of residence) his family members shall acquire the right of permanent residence on condition that:</p> <ul style="list-style-type: none"> (a) the worker/self-employed person had resided continuously in the Member State for 2 years before death; or (b) death resulted from accident at work or occupational disease; or (c) the surviving spouse lost the nationality of that Member State following marriage to the worker/self-employed person. 	<i>Regulation 15(1)(e)</i>	
Article 18	Acquisition of the right of permanent residence by certain family members who are not a national of a Member State.		
18	<p>Family members of Union Citizens gain permanent right of residence after residing lawfully in host Member State for 5 consecutive years.</p>	<i>Regulation 15(1)(f)</i>	

SECTION II – ADMINISTRATIVE FORMALITIES			
Article 19		Document certifying permanent residence for Union Citizens	
19(1)	Upon application, Member States shall issue Union citizens entitled to permanent residence with a document certifying permanent residence after verifying the duration of residence.	<i>Regulation 18(1)</i>	
19(2)	The document certifying permanent residence shall be issued as soon as possible.	<i>Regulation 18(1)</i>	
Article 20		Permanent residence card for family members who are not nationals of a Member State.	
20(1)	Non Member State national family members shall be issued with a permanent residence card within 6 months of the submission of their application. The card shall be renewable automatically every 10 years.	<i>Regulation 18(2) and (3)</i>	
20(2)	Application for a residence card shall be submitted before the residence card expires. Failure to comply may render the person to proportionate and non-discriminatory sanctions.	The Secretary of State has decided not to implement this provision.	
20(3)	Interruption in residence not exceeding two years shall not affect the validity of the permanent residence card.	<i>Regulation 18(5)</i> referring to <i>Regulation 15</i> (which includes the reference to <i>15 (2)</i> which provides that the right to permanent residence shall be lost through absence from the United Kingdom for a period exceeding two consecutive years).	
Article 21		Continuity of residence	
21	Continuity of residence may be shown by any means of proof in use in the host Member State. Continuity of residence is broken by any expulsion decision enforced against the person concerned.	Illustrations of the type of proof that could be provided will be set out in guidance. <i>Regulation 3(3)</i> implements the second provision of Article 21.	
CHAPTER V – PROVISIONS COMMON TO THE (PERMANENT) RIGHT OF RESIDENCE			
Article 22		Territorial scope	
22	Right of residence/permanent residence shall cover the whole territory of the host Member State. Member States may impose restrictions, but only if the same restriction apply to their own nationals.	<i>Regulations 11, 13, 14 and 15</i> provide a right of admission (in respect of regulation 11) and various rights of residence, as set out, to the United Kingdom.	

Article 23	Related Rights		
23	Family members who have the right of residence/permanent residence in a Member State shall be entitled to take up employment/self-employment there irrespective of nationality.	These Regulations do not implement this provision as they only concern the right of movement and residence of EEA nationals and their family members. However, other Government Departments may rely on this provision in making relevant instruments.	Other Secretaries of State as appropriate.
Article 24	Equal Treatment		
24(1)	All Union citizens residing in the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the treaty. This benefit extends to family members who are not nationals of a Member State but have right of residence/permanent residence.	These Regulations do not implement this provision as they only concern the right of movement and residence of EEA nationals and their family members. However, other Government Departments may rely on this provision in making relevant instruments.	Other Secretaries of State as appropriate.
24(2)	Host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence, or where appropriate a longer period (as provided for by Article 14(4)(b)). It shall not be obliged (prior to the acquisition of the right of permanent residence) to grant maintenance aid for studies including vocational training, consisting in student grants/loans to person other than workers/self-employed persons or persons who retain such status and members of their families.	These Regulations do not implement this provision as they only concern the right of movement and residence of EEA nationals and their family members. However, other Government Departments may rely on this provision in making relevant instruments.	Other Secretaries of State as appropriate.
Article 25	General provisions concerning residence documents		
25(1)	Possession of a certificate may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other mean of proof.	<i>Regulations 14(1) and 15(1)</i> provide the basis of a person's entitlement to the relevant right to reside. This does not depend on the prior possession of the documents referred to in Article 25(1).	
25(2)	The documents mentioned in Article 25(1) shall be issued free of charge.	<i>Regulations 16(7), 17(7) and 18(4).</i>	
Article 26	Checks		
26	Allows Member States to carry out checks for non Member State nationals to carry their registration certificate/residence card as long the same applies to their own nationals.	No action required.	

CHAPTER VI – RESTRICTIONS ON THE RIGHT OF ENTRY AND RIGHT OF RESIDENCE ON GROUNDS OF PUBLIC POLICY/SECURITY/HEALTH

Article 27		General Principles	
27(1)	<p>Member States may restrict the freedom of movement and residence of Union Citizens (and their family members) on grounds of public policy/health/security.</p> <p>These grounds can not be invoked to serve economic ends.</p>	<p><i>Regulations 12(5), 13(3)(a), 14(5), 15(3), 16(8), 17(8), 18(5), 19(3)(b), 20(1) and (6), and Regulation 21</i> (the main regulation on this area).</p> <p><i>Regulation 21(2)</i></p>	
27(2)	<p>Measures taken on grounds of public policy/security shall be proportional and based exclusively on the conduct of the individual concerned. No previous criminal convictions can alone constitute grounds for taking such measures.</p> <p>Personal conduct must represent a genuine, present and sufficiently serious threat.</p>	<p><i>Regulation 21(5) and (6)</i></p>	
27(3)	<p>In order to ascertain whether the person concerned presents a danger, the Host Member State may request other Member States to provide information concerning any previous police record that the person concerned may have. Such enquiries will not be made out of routine and a reply to any checks made will be given within 2 months.</p>	<p>Legislation is not required.</p>	
27(4)	<p>The Member State which issues the passport/ID card shall allow the holder who has been expelled from another Member State to re-enter its territory without any formalities.</p>	<p>Legislation is not required.</p>	
Article 28		Protection against expulsion	
28(1)	<p>Before taking an expulsion decision, the host Member State shall take account of particular considerations.</p>	<p><i>Regulation 21(7)</i></p>	
28(2)	<p>The host Member State cannot expel a Union Citizen or his/her family members who have a right of permanent residence except on serious grounds of public policy/security.</p>	<p><i>Regulation 21(3)</i></p>	
28(3)	<p>An expulsion decision cannot be taken against Union Citizens, unless the decision is based on imperative grounds of public security, if they:</p>	<p><i>Regulation 21(4)</i></p>	

	(a) have resided in the host Member State for the past ten years; or (b) are a minor, except if the expulsion is in the best interests of the child.		
Article 29	Public health		
29(1)	Only diseases with epidemic potential (as defined by World health Organisation) and other infectious diseases if they are the subject of protection provisions applying to nationals of the host Member State may justify the restriction on freedom of movement.	<i>Regulation 21(7)(a)</i> In addition to the relevant WHO regulations, reference is also made to a disease to which section 38 of the Public Health (Control of Disease) Act 1984 applies (which concerns detention in hospital of a person with a notifiable disease).	
29(2)	Diseases occurring three months after arrival in host Member State shall not constitute grounds for expulsion.	<i>Regulation 21(7)(b)</i>	
29(3)	Member States may (where serious indications that it is necessary), within three months from date of arrival, require persons entitled to the right of residence to undergo a free medical examination certifying that they are no suffering from any of the conditions in Article 29(1).	<i>Regulation 22(2)(c)</i>	
Article 30	Notification of decisions		
30(1)	Persons concerned shall be notified in writing of any taken under Article 27(1), such that they are able to comprehend its content and implications.	Generally, see <i>Regulation 26(7)</i> and <i>Schedule 2</i> for the application of section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of immigration decision) and Regulations made under that section concerning the notification of decisions taken in respect of a person. Also, see <i>paragraph 5 of Schedule 5 to the Regulations</i> , which amends the Immigration (Notices) Regulations 2003.	
30(2)	Persons shall be informed of the decision with full reasons unless it is contrary to the interests of State security.	The above provisions in respect of Article 30(1) also apply here. See also <i>Regulations 12(3), 16(6) and 17(5)</i> in respect of decisions concerning extended family members as defined in the Regulations.	
30(3)	The notification shall specify the court or administrative authority with which the person concerned may	The same provisions in respect of Article 30(1) apply regarding the notification of appeal rights.	

	<p>lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.</p>	<p><i>Regulation 24(6)</i> provides that a person subject to removal from the United Kingdom will be allowed one month to leave before being removed except in duly substantiated cases of urgency, where the person is detained pursuant to a sentence or court order and/or has returned to the United Kingdom when a Deportation Order remains outstanding against him. In those circumstances the person will not be in a position to be able to leave the territory voluntarily within a month of the decision being notified to him.</p>	
Article 31 Procedural safeguards			
31(1)	<p>The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.</p>	<p><i>Regulation 26</i> provides for appeals generally and <i>Regulation 28</i> provides for appeals to the Special Immigration Appeals Commission.</p>	
31(2)	<p>Where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except:</p> <ul style="list-style-type: none"> – where the expulsion decision is based on a previous judicial decision; or – where the persons concerned have had previous access to judicial review; or – where the expulsion decision is based on imperative grounds of public security 	<p><i>Regulation 27</i> provides which appeals are in country and so have suspensive effect and which appeals are out of country. <i>Regulation 29</i> concerns the effect of appeals.</p>	

	under Article 28(3).		
31(3)	The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.	<i>Regulation 26</i> provides for appeals generally and <i>Regulation 28</i> provides for appeals to the Special Immigration Appeals Commission.	
31(4)	Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.	<i>Regulation 27</i> provides which appeals are in country and so have suspensive effect and which appeals are out of country.	
Article 32	Duration of exclusion orders		
32(1)	Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion. The Member State concerned shall reach a decision on this application within six months of its submission.	<i>Regulation 24(3)</i> applies the relevant provisions of the Immigration Act 1971 (as amended) as set out concerning deportation orders. Section 5(2) of that Act provides that a person may apply at any time to have any outstanding deportation order in place against him revoked.	
32(2)	The persons referred to in Article 32(1) shall have no right of entry to the territory of the Member State concerned while their application is being considered.	<i>Regulation 24(2)</i> provides that a person who enters or seeks to enter to the UK in breach of a Deportation Order shall be treated as an illegal entrant under Schedule 2 of the Immigration Act 1971.	
Article 33	Expulsion as a penalty or legal consequence		
33(1)	Expulsion orders may not be issued by the host Member State as a penalty or	Any recommendation for deportation made by a Court	

33(2)	<p>legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29.</p> <p>If an expulsion order, as provided for in Article 33(1), is enforced more than two years after it was issued, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security and shall assess whether there has been any material change in the circumstances since the expulsion order was issued.</p>	<p>under section 3(6) of the Immigration Act 1971 in respect of a person to whom the Regulations apply, will be considered by the Secretary of State under <i>Regulation 19(3)(b)</i> so the deportation order provisions of section 3(5)(a) of the Immigration Act 1971 will apply by virtue of <i>Regulation 24(3)</i>.</p> <p>This has been applied in respect of all deportation orders made under the Regulations – see <i>Regulation 24(5)</i>.</p>	
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CHAPTER VII – FINAL PROVISIONS

Article 34	Publicity		
		No legislative action required. The Secretary of State will make appropriate notification of the rights and obligations arising under the Directive and the Regulations.	
Article 35	Abuse of rights		
		<i>Regulation 2(1)</i> provides that the definition of 'civil partner' does not include a civil partnership of convenience; and the definition of 'spouse' does not include a party to a marriage of convenience.	
Article 36	Sanctions		
		No legislative action required	
Article 37	More favourable national provisions		
		No legislative action required	
Article 38	Repeals		
		No legislative action required	
Article 39	Report		
		No legislative action required	
Article 40	Transposition		
		Bringing into force the	

		Regulations. See the explanatory note to the Regulations. This shall be communicated to the Commission as required.	
Article 41	Entry into force		
		No action required	
Article 42	Addressees		
		No action required	