

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (EUROPEAN ECONOMIC AREA) (AMENDMENT)
REGULATIONS 2009

2009 No. 1117

1. This explanatory memorandum has been prepared by the Home Department and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These regulations amend the Immigration (European Economic Area) Regulations 2006 ('the 2006 Regulations') which transpose Directive 2004/38/EC 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') into UK law.
 - 2.2 These amending regulations: provide a power for the Secretary of State to exclude EEA nationals from the United Kingdom in certain circumstances; introduce a power to detain EEA nationals for the purpose of examining whether they are exercising Treaty rights; and make a number of other minor amendments.
3. **Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The Secretary of State has the power to personally direct that a person is to be excluded from the UK. Where such a decision is taken by the Secretary of State this prohibits the person's entry to the UK. These regulations amend the 2006 Regulations to enable the Secretary of State to apply the power in order to exclude EEA nationals and their family members from the UK on grounds of public policy, public security and public health.
 - 4.2 These regulations provide for a power for immigration officers to detain and question EEA nationals where there are reasonable grounds for suspecting that a person is not exercising a treaty right in the UK and may be liable for removal on that basis.
 - 4.3 A consequential amendment to the Child Trust Funds Act 2004 is included, updating a reference made to the Immigration (European Economic Area) Regulations 2000 ('the 2000 Regulations'), the predecessor regulations to the 2006 Regulations.
 - 4.4 The further provisions of the amending regulations clarify the UK's transposition of the Directive.
5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Phil Woolas has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (European Economic Area) (Amendment) Regulations 2009 are compatible with the Convention rights.

7. Policy background

7.1 The 2006 Regulations, by transposing the Directive, set out the rights of EEA nationals and their family members to be admitted to and reside in the UK. Under the 2006 Regulations EEA nationals may reside in the UK for an initial period of three months without any conditions, other than that they may not become an unreasonable burden on the social assistance system of the UK. If they wish to remain beyond that initial period, they must be a 'qualified person' exercising a Treaty right (i.e. be a jobseeker, employed, self-employed, self-sufficient or a student).

7.2 An EEA national or the family member of an EEA national may be excluded from the UK on grounds of public policy, public security or public health. Where it is identified that such a person should be excluded from the UK, the Secretary of State may personally decide to make an exclusion order in respect of that individual. The effect of the exclusion order is to prohibit the person's admission to the UK as long as the order remains in force. The intention is to protect the UK against the threat that an individual poses to public policy, public security or public health.

7.3 The 2006 Regulations provide that "a person who has been admitted to, or acquired a right to reside in, the UK under these Regulations may be removed from the UK if- (a) he does not have or ceases to have a right to reside under these Regulations" (reg 19(3)(a)). Such a person is treated as if he were a person to whom section 10(1)(a) of the Immigration and Asylum Act 1999 applies.

7.4 Despite the foregoing provision, there is currently no provision for an individual to be arrested and detained in order to establish if s/he does not have or has ceased to have a right to reside.

7.5 A minor amendment to the Child Trust Funds Act 2004 is required to correct an out-of-date reference to the Immigration (EEA) Regulations 2000, which were repealed and replaced by the 2006 Regulations. The reference to "a qualified person...within the meaning of the 2000 Regulations" is hereby replaced by a generic reference to those having enforceable Community rights or rights flowing from instruments made under the European Communities Act 1972. Such a reference will future proof the Child Trust Funds Act 2004 against any new Regulations on free movement.

7.6 Other miscellaneous amendments clarify the UK's transposition of the Directive.

7.7 The department does not intend to consolidate the relevant legislation

8. Consultation outcome

8.1 The provision enabling the Secretary of State to personally exclude EEA nationals and their family members from the UK follows a recommendation that came out of a wider Cabinet review in 2008 of the policy on exclusion from the UK.

9. Guidance

9.1 The UK Border Agency will publish guidance on the effect of these changes. The primary source of such guidance will be in the European Casework Instructions on the UK Border Agency website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none.

10.2 The impact on the public sector is none.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 A person who is subject to an exclusion order will be entitled to appeal against the decision to make an exclusion order. Exclusion orders will be reviewed in accordance with the terms of the Directive.

13. Contact

13.1 Eldon Ward at the Home Office e-mail: eldon.ward@homeoffice.gsi.gov.uk or tel: 020 3014 1451 can answer any queries regarding the instrument.