

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (EUROPEAN ECONOMIC AREA) (AMENDMENT)
REGULATIONS 2011

2011 No. 1247

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. **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 of the European Parliament and the Council of 29th 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”).

2.2 These Regulations make two amendments to the 2006 Regulations; firstly, to reflect current practice, they clarify the circumstances in which the resources of an EEA national (and his/her family members) are to be regarded as sufficient; and, secondly, to reflect current practice and comply with the Court of Justice of the European Union’s decision in the case of *Metock* (case C-127/08), to make clear that a family member of an EEA national may accompany that national to or join him/her in the UK irrespective of whether that family member has previously been lawfully resident in another Member State.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 The Directive sets out the rights of Union citizens and their family members to move and reside freely within the territory of the Member States. 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 regulation 13 of the 2006 Regulations, EEA nationals who hold a valid identity card or passport issued by an EEA State may reside in the UK for an initial period of three months without any conditions attached, except that they may not be an unreasonable burden on the social assistance system of the UK. If they wish to remain beyond the initial period, regulation 14 provides that they must be a ‘qualified person’: i.e. a job-seeker, a worker, a self-employed person, a self-sufficient person or a student. In order to be a self-sufficient person, regulation 4(1)(c) provides that an EEA national (and his/her family members) must have sufficient resources for him/herself (and his/her family members) not to become a burden on the social assistance system of the UK. In order

to be a student, regulation 4(1)(d) states that a person must assure the decision-maker that he/she (and his/her family members) has sufficient resources for him/herself (and his/her family members) not to become a burden on the social assistance system of the UK. When assessing whether a Union citizen (and his/her family members) has sufficient resources for him/herself (and his/her family members) not to become a burden on the social assistance system of the host Member State, Article 8(4) of the Directive makes clear that Member States must take into account the personal situation of the person concerned. Regulation 2(2) of these Regulations gives effect to this provision.

4.2 Article 3(1) of the Directive states that it applies to all Union citizens who move to or reside in a Member State other than that of which they are a national and to their family members who accompany or join them. In *Metock*, the Court of Justice of the European Union said that the Directive precludes legislation of a Member State which requires a family member to be lawfully resident in another Member State before arriving in the host Member State in order to benefit from the Directive. Regulations 2(3) and 2(4) of these Regulations give effect to this.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 With regard to the concept of ‘sufficient resources’, these Regulations amend the 2006 Regulations to clarify current casework practice. They make clear that the resources of an EEA national (and his/her family members) are to be regarded as sufficient where they exceed the maximum level of resources which a British citizen (and his/her family members) may possess in order to be eligible for social assistance under the UK benefit system. In cases where the resources of the person (and his/her family members) do not exceed that level, they will nevertheless be regarded as sufficient if, taking into account the personal situation of the person(s) concerned, it appears to the decision-maker that the resources of the person(s) in question should be regarded as sufficient.

7.2 With regard to the rights of family members, these Regulations amend the 2006 Regulations to comply with the Court of Justice of the European Union’s judgment in *Metock* (and to reflect current operation practice which is already compliant with that judgment). In that case the court said that the Directive precluded national legislation which insisted upon a family member already being lawfully resident within the Union in order to benefit from the Directive. The UK Border Agency has been operationally compliant with this judgment since November 2008.

8. Consultation outcome

8.1 No formal consultation is required for these types of changes as they are technical amendments which reflect current operational practice and case-law.

9. Guidance

9.1 No changes are required as these amendments reflect current operational practice.

9.2 Guidance on how caseworkers in the UK assess applications for residence documentation from EEA nationals and their family members can be found in the European Casework Instructions which are available on the UK Border Agency website: <http://www.ukba.homeoffice.gov.uk/eucitizens/rightsandresponsibilites/>. Information on overseas applications can be found at: <http://www.ukvisas.gov.uk/en/ecg/eunationalschemes/eeafamilypermit>.

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 The UK Border Agency will continue to take account of developments in case-law and any further guidelines that the European Commission may produce to offer assistance to Member States on the implementation of the Directive. The UK Border Agency will also take account of any independent reports on how we operate our casework business.

13. Contact

13.1 Alicia Ioannou at the Home Office – e-mail: alicia.ioannou3@homeoffice.gsi.gov.uk or tel: 0207 035 3606 – can answer any queries regarding the instrument.