

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (CERTIFICATE OF ENTITLEMENT TO THE RIGHT
OF ABODE IN THE UNITED KINGDOM) (AMENDMENT)
REGULATIONS 2011

2011 No. 2682

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make minor changes to the Immigration (Certificate of Entitlement to the Right of Abode in the United Kingdom) Regulations 2006. These consist of some modifications to the application process for a certificate of entitlement (a certificate showing that a person has a right of abode in the United Kingdom) and the deletion of references to identity cards within the regulations.

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

3.1 None

4. Legislative Context

4.1 A certificate of entitlement is a document specified in section 3(9) of the Immigration Act 1971 that can be produced as proof of the holder's right of abode in the United Kingdom under section 2 of that Act.

4.2 Section 10 of the Nationality, Immigration and Asylum Act 2002 empowers the Secretary of State to make provision by regulations for the issue of a certificate of entitlement to a person that has the right of abode in the United Kingdom. It was introduced due to concern that a lack of regulation made the process of obtaining certificates of entitlement vulnerable to fraud.

4.3 The Immigration (Certificate of Entitlement to the Right of Abode in the United Kingdom) Regulations 2006 were made under the power conferred by Section 10 of the 2002 Act and came into force on 21 December 2006.

4.4 These regulations amend the 2006 Regulations to-

- a) allow persons applying for a certificate of entitlement in the Channel Islands or Isle of Man to apply to the Secretary of State for the Home Department as well as the Lieutenant Governor for the certificate.
- b) give a discretion to consider applications for a certificate of entitlement where a person is unable to provide all of the documents required under the regulations to demonstrate a right of abode in the UK, where the applicant clearly has such a right.

- c) to prevent the issue of a certificate of entitlement where the applicant already hold a certificate of entitlement.
- d) to allow revocation of a certificate of entitlement where a person holds another certificate of entitlement.
- e) delete references to ID cards, following the repeal of the Identity Cards Act 2006

5. Territorial Extent and Application

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

- What is being done and why

7.1 Those in the Channel Islands and the Isle of Man are being given the option of applying directly to the UK Border Agency for a certificate of entitlement (currently applications must go to the Lieutenant Governor). This is because the process for issuing a certificate of entitlement was recently changed from a manual to an electronic system. To install the relevant systems to issue certificates of entitlement in the Islands would have been cost-prohibitive for the number of applications involved. As applications are currently received in the Islands and forwarded to the UK Border Agency for processing; this change will have the additional benefit of speeding up the process by allowing applications to be made directly to UK Border Agency.

7.2 Changes to allow some discretion over the requirement to produce the relevant documents to establish a right of abode are being introduced following a number of cases where a person could not produce all of those documents but clearly had a right of abode. An example of this might be where a person was unable to obtain an official copy of his or her parents' marriage certificate (in circumstances where to insist on this would be unreasonable), but there was sufficient evidence to establish that the marriage had taken place.

7.3 We are also introducing changes intended to prevent an individual holding more than one certificate of entitlement at a time, and allowing the UK Border Agency to revoke certificates of entitlement, where individuals already have more than one certificate. This is intended to reduce the potential for fraud and evasion of UK immigration controls, by restricting the number of certificates in circulation.

8. Consultation outcome

8.1 There is no statutory obligation to consult before making changes to these regulations, and due to the minor nature of the changes being made and the fact that the changes will not disadvantage members of the public in any way it was decided that a formal public consultation was not needed.

9. Guidance

9.1 The changes made by the Regulations are being brought to the attention of those who regularly represent applicants and will be reflected in the application form and guidance notes made available for their use. Guidance issued to staff on application of these regulations will be published on the UK Border Agency website in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

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 None will be required given the purely administrative impact of these changes to the 2006 Regulations.

13. Contact

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