

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 20 April 2006 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
20 April 2006*

(This document is accompanied by an Explanatory Memorandum)

STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the Rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC 329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cmnd 3953), 8 October 1998 (Cmnd 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cmnd 4851), 27 August 2001 (Cmnd 5253), 16 April 2002 (HC 735), 27 August 2002 (Cmnd 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cmnd 5829), 24 August 2003 (Cmnd 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC 523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949) and 30 March 2006 (HC 1016).

These changes shall take effect on 30th April 2006.

1. In paragraph 5, for “the Immigration (European Economic Area) Regulations 2000 or Commission Regulation 1251/70” substitute “the 2006 EEA Regulations”.
2. In paragraph 6:
 - (a) for the definition of “the 2000 EEA Regulations” substitute:

“ ‘the 2006 EEA Regulations’ means the Immigration (European Economic Area) Regulations 2006.”;
 - (b) delete the definition of “Accession State national”;
 - (c) for the definition of “EEA national” substitute:

“ ‘EEA national’ has the meaning given in regulation 2(1) of the 2006 EEA Regulations.”.
3. In paragraph 7, for “the Immigration (European Economic Area) Regulations 2000 or Commission Regulation 1251/70” substitute “the 2006 EEA Regulations”.
4. Paragraphs 255 to 255B are deleted but this is subject to the transitional provision in paragraph 5.
5. Paragraphs 255 to 255B shall continue to apply for the purpose of determining an application made before 30th April 2006 for an endorsement under paragraph 255.
6. Delete paragraph 257.
7. Paragraphs 257A and 257B are deleted but this is subject to the transitional provision in paragraph 8.
8. Paragraph 257A shall continue to apply for the purpose of determining an application made before 30th April 2006 for an endorsement under that paragraph and paragraph 257B shall continue to apply for the purpose of determining an application made before that date for an endorsement under paragraph 257B.
9. In paragraph 257C, for “the 2000 EEA Regulations” in paragraph (i) substitute “the 2006 EEA Regulations”.
10. In paragraph 257D, for “the 2000 EEA Regulations” substitute “the 2006 EEA Regulations”.
11. For paragraph 290A, substitute:

“290A. For the purposes of paragraph 290 and paragraphs 291 – 295, an EEA national who holds a registration certificate or a document certifying permanent residence issued under the 2006 EEA Regulations (including an EEA national who holds a residence permit issued under the Immigration (European Economic Area) Regulations 2000 which is treated as if it were such a certificate or document by virtue of Schedule 4 to the 2006 EEA Regulations) is to be regarded as present and settled in the United Kingdom.”

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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 20 APRIL 2006 (HC 1053)**

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 This Statement of Changes in Immigration Rules revokes the existing provision of the right for European Economic Area (EEA) nationals and their family members to apply for permission to remain indefinitely under United Kingdom domestic law under certain conditions given in paragraphs 255 to 257 of the Immigration Rules.

2.2 The Immigration (EEA) Regulations 2006 ("the 2006 Regulations"), which come into force on 30 April 2006, 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.

2.3 From 30 April 2006, EU nationals and their family members acquire a permanent right of residence under certain conditions and generally after five years of residence in the host Member State under European law.

2.4 Regulations 15 and 18 of the 2006 Regulations transpose this right of permanent residence contained in the Directive and apply it to all EEA nationals and their family members.

2.5 This Statement of Changes in Immigration Rules also makes amendments consequential to the making of the 2006 Regulations. References to the 2000 Regulations will be removed and replaced with references to the 2006 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 of the Directive is 30 April 2006.

4.2 The provision in the Directive for permanent residence (under European law) supersedes the provision for EEA nationals to be granted permanent residence under UK domestic law as set out in the Immigration Rules. Further minor consequential amendments to the Immigration Rules are also required to reflect the coming into force of the 2006 Regulations.

4.3 This Statement of Changes in Immigration Rules will take effect from 30 April. This Statement will be incorporated into a consolidated version of the Immigration Rules, which can be found under the 'Laws and Policy' page of the Home Office website at www.ind.homeoffice.gov.uk where there are also copies of all the Statement of Changes in Immigration Rules issued since May 2003.

5. Extent

5.1 This Statement of Changes in Immigration Rules applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 Directive 2004/38/EC consolidates the provisions made in a number of repealed Directives, but it also contains new provisions, one of which represents a new development of the law on the free movement of persons, namely:

- (a) 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 s/he has been exercising a Treaty right (i.e. employment, self-employment, studying or self-sufficiency).

7.2 As was the case in the 2000 Regulations, the 2006 Regulations apply to nationals from all European Union Member States, the European Free Trade Association (EFTA) States: Norway, Iceland and Liechtenstein and finally to Switzerland. These nationals are defined for the purposes of the 2006 Regulations as “EEA nationals” and the right of permanent residence provided under regulation 15 of the 2006 Regulations therefore applies to them 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 this Statement of Changes on the public sector is not anticipated to be different from the impact of the previous provisions. This is because both the Statement of Changes and the current provisions in the Rules, which they replace, make similar provision. As with the existing provisions in the Rules, this Statement of Changes 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

Seonaid Webb at the Home Office Tel: 020 8760 8455 or e-mail: Seonaid.Webb@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.