Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 2(6) of the European Union (Accessions) Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

IMMIGRATION

Accession (Immigration and Worker Registration) Regulations 2004

Made - - - -	*2004*
Coming into force - -	*1st May 2004*

The Secretary of State, being a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the right of entry into, and residence in, the United Kingdom and access to the labour market of the United Kingdom, in exercise of the powers conferred on him by section 2(2), and in exercise of the powers conferred upon him by section 2 of the European Union (Accessions) Act 2003(**3**), hereby makes the following Regulations, a draft of which has been approved by resolution of each House of Parliament:

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Accession (Immigration and Worker Registration) Regulations 2004 and shall come into force on 1st May 2004.

(2) In these Regulations —

(a) "the 1971 Act" means the Immigration Act 1971(**4**);

(b) "the 2000 Regulations" means the Immigration (European Economic Area) Regulations 2000(**5**);

(**1**) S.I.2000/1813 and S.I. 2004/706.
(**2**) 1972 c. 68.
(**3**) 2003 c. 35.
(**4**) 1971 c. 77.
(**5**) S.I. 2000/2326.

(c) "accession period" means the period beginning on 1st May 2004 and ending on 30th April 2009;

(d) "accession State worker requiring registration" shall be interpreted in accordance with regulation 2;

(e) "authorised employer" shall be interpreted in accordance with regulation 7;

(f) "EEA State" means a Member State, other than the United Kingdom, or Norway, Iceland or Liechtenstein, and "EEA national" means a national of an EEA State;

(g) "employer" means, in relation to a worker, the person who directly pays the wage or salary of that worker;

(h) "registration certificate" means a certificate issued under regulation 8 authorising an accession State worker requiring registration to work for an employer;

(i) "relevant accession State" means the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the Slovak Republic;

(j) "self-sufficient person" has the same meaning as in regulation 3 of the 2000 Regulations;

(k) "worker" means a worker within the meaning of Article 39 of the Treaty establishing the European Community(**6**), and "work" and "working" shall be construed accordingly.

"Accession State worker requiring registration"

2.—(1) Subject to the following paragraphs of this regulation, "accession State worker requiring registration" means a national of a relevant accession State working in the United Kingdom during the accession period.

(2) A national of a relevant accession State is not an accession State worker requiring registration if on 30th April 2004 he had leave to enter or remain in the United Kingdom under the 1971 Act and that leave was not subject to any condition restricting his employment.

(3) A national of a relevant accession State is not an accession State worker requiring registration if he was legally working in the United Kingdom on 30th April 2004 and had been legally working in the United Kingdom without interruption throughout the period of 12 months ending on that date.

(4) A national of a relevant accession State who legally works in the United Kingdom without interruption for a period of 12 months falling partly or wholly after 30th April 2004 shall cease to be an accession State worker requiring registration at the end of that period of 12 months.

(5) A national of a relevant accession State is not an accession State worker requiring registration during any period in which he is also a national of —

(a) the United Kingdom;

(b) another EEA State, other than a relevant accession State; or

(c) Switzerland.

(6) A national of a relevant accession State is not an accession State worker requiring registration during any period in which he is —

(a) a posted worker; or

(b) a family member of a Swiss or EEA national who is in the United Kingdom as —

(i) a worker, other than as an accession State worker requiring registration;

(ii) a self-sufficient person;

(iii) a retired person; or

(**6**) OJ No. C325, 24.12.02, p.51.

(iv) a student.

(7) For the purpose of this regulation —

(a) a person working in the United Kingdom during a period falling before 1st May 2004 was legally working in the United Kingdom during that period if —

(i) he had leave to enter or remain in the United Kingdom under the 1971 Act for that period, that leave allowed him to work in the United Kingdom, and he was working in accordance with any condition on that leave restricting his employment; or

(ii) he was entitled to reside in the United Kingdom for that period under the 2000 Regulations without the requirement for such leave;

(b) a person working in the United Kingdom on or after 1st May 2004 is legally working during any period in which he is working in the United Kingdom for an authorised employer;

(c) a person shall also be treated as legally working in the United Kingdom on or after 1st May 2004 during any period in which he falls within paragraph (5) or (6).

(8) For the purpose of paragraphs (3) and (4), a person shall be treated as having worked in the United Kingdom without interruption for a period of 12 months if he was legally working in the United Kingdom at the beginning and end of that period and any intervening periods in which he was not legally working in the United Kingdom do not, in total, exceed 30 days.

(9) In this regulation —

(a) "retired person" and "student" have the same meaning as in regulation 3 of the 2000 Regulations;

(b) "posted worker" means a person whose employer is not established in the United Kingdom and who works for that employer in the United Kingdom for the purpose of providing services on his employer's behalf;

(c) "family member" means —

(i) in relation to a worker, his spouse and his children who are under 21 or dependent on him;

(ii) in relation to any other person, his spouse and his children who are dependent on him.

PART 2

Immigration

Amendment of the 2000 Regulations

3. In regulation 2(1) of the 2000 Regulations, for the definition of "EEA State" substitute —

""EEA State" means a Member State, other than the United Kingdom, or Norway, Iceland or Liechtenstein.".

Right of residence of work seekers and workers from relevant acceding States during the accession period

4.—(1) This regulation derogates during the accession period from Article 39 of the Treaty establishing the European Community, Articles 1 to 6 of Regulation (EEC) No. 1612/68(**7**) on freedom of movement for workers within the Community and Council Directive (EEC) No. 68/360

(**7**) OJ L 257, 19.10.1968, p. 2.

on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families(**8**).

(2) A national of a relevant accession State shall not be entitled to reside in the United Kingdom for the purpose of seeking work by virtue of his status as a work seeker if he would be an accession State worker requiring registration if he began working in the United Kingdom.

(3) Paragraph (2) is without prejudice to the right of a national of a relevant accession State to reside in the United Kingdom under the 2000 Regulations as a self-sufficient person whilst seeking work in the United Kingdom.

(4) An accession State worker requiring registration shall only be entitled to reside in the United Kingdom in accordance with the 2000 Regulations as modified by regulation 5.

Application of 2000 Regulations in relation to an accession State worker requiring registration

5.—(1) The 2000 Regulations shall apply in relation to an accession State worker requiring registration subject to the modifications set out in this regulation.

(2) An accession State worker requiring registration shall be treated as a worker for the purpose of the definition of "qualified person" in regulation 5(1) of the 2000 Regulations only during a period in which he is working in the United Kingdom for an authorised employer.

(3) Subject to paragraph (4), regulation 5(2) of the 2000 Regulations shall not apply to an accession State worker requiring registration who ceases to work.

(4) Where an accession State worker requiring registration —

(a) begins working for an authorised employer on or after 1st May 2004; and

(b) ceases working for that employer in the circumstances mentioned in regulation 5(2) of the 2000 Regulations during the one month period beginning on the date on which the work begins,

that regulation shall apply to that worker during the remainder of that one month period.

(5) An accession State worker requiring registration shall not be treated as an EEA national for the purpose of the power in regulation 10 of the 2000 Regulations (dependants and members of the household of EEA nationals)(**9**) to issue a residence permit or a residence document to a relative of an EEA national or his spouse.

(6) An accession State worker requiring registration shall not be treated as a qualified person for the purpose of regulation 15 of the 2000 Regulations (issue of residence permits and residence documents).

Transitional provisions applying to the application of the 2000 Regulations to nationals of the accession States and their family members

6.—(1) Where before 1st May 2004 a qualified person or the family member of a qualified person has been given leave to enter or remain in the United Kingdom under the 1971 Act subject to conditions, those conditions shall cease to have effect on and after that date.

(2) Where before 1st May 2004 directions have been given for the removal of a qualified person or the family member of a qualified person under paragraphs 8 to 10A of Schedule 2 to the 1971 Act(**10**) or section 10 of the 1999 Act, those directions shall cease to have effect on and after that date.

(**8**) OJ L. 257, 19.10.1968, p.13.
(**9**) Regulation 10(4) has been amended by regulation 5 of S.I. 2001/865.
(**10**) Paragraphs 8 to 10 have been amended by the Schedule to the Immigration Act 1988 (c. 14), Schedule 2 to the Asylum and Immigration Act 1996 (c. 49), and Schedule 7 to the Nationality, Immigration and Asylum Act 2002(c. 41) and paragraph 10A was inserted by section 73 of the 2002 Act.

(3) Where before 1st May 2004 the Secretary of State has made a decision to make a deportation order against a qualified person or the family member of a qualified person under section 5(1) of the 1971 Act—

(a) that decision shall, on and after 1st May 2004, be treated as if it were a decision under regulation 21(3)(b) of the 2000 Regulations; and

(b) any appeal against that decision, or against the refusal by the Secretary of State to revoke the deportation order, made under section 63 of the 1999 Act or section 82(2)(j) or (k) of the 2002 Act before 1st May 2004 shall, on and after that date, be treated as if it had been made under regulation 29 of the 2000 Regulations.

(4) In this regulation—

(a) "the 1999 Act" means the Immigration and Asylum Act 1999(**11**)

(b) "the 2002 Act" means the Nationality, Immigration and Asylum Act 2002;

(c) regulation 6 of the 2000 Regulations shall apply for the purpose of determining whether a person is the family member of another person;

(d) any reference to a qualified person or to the family member of a qualified person is a reference to a person who becomes for the purpose of the 2000 Regulations a qualified person or the family member of a qualified person, as the case may be, on 1st May 2004 by virtue of regulation 3.

PART 3

Accession State worker registration

Requirement for an accession State worker requiring registration to be authorised to work

7.—(1) By way of derogation from Article 39 of the Treaty establishing the European Community and Articles 1 to 6 of Regulation (EEC) No. 1612/68(**12**) on freedom of movement for workers within the Community, an accession State worker requiring registration shall only be authorised to work in the United Kingdom for an authorised employer.

(2) An employer is an authorised employer in relation to a worker if —

(a) the worker was legally working for that employer on 30th April 2004 and has not ceased working for that employer after that date;

(b) the worker —

(i) during the one month period beginning on the date on which he begins working for the employer, applies for a registration certificate authorising him to work for that employer in accordance with regulation 8; and

(ii) has not received a valid registration certificate or notice of refusal under regulation 8 in relation to that application or ceased working for that employer since the application was made;

(c) the worker has received a valid registration certificate authorising him to work for that employer and that certificate has not expired under paragraph (5); or

(d) the employer is an authorised employer in relation to that worker under paragraph (3) or (4).

(**11**) 1999 c. 33.
(**12**) OJ L 257, 19.10.1968, p. 2.