

2011 No. 1247

IMMIGRATION

**The Immigration (European Economic Area) (Amendment)
Regulations 2011**

<i>Made</i> - - - -	<i>9th May 2011</i>
<i>Laid before Parliament</i>	<i>12th May 2011</i>
<i>Coming into force</i> - -	<i>2nd June 2011</i>

The Secretary of State, being a Minister designated^(a) for the purpose of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred by that section makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2011 and shall come into force on 2 June 2011.

(2) In these Regulations, “the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006^(c).

Amendment of the 2006 Regulations

2.—(1) The 2006 Regulations are amended as follows.

(2) In regulation 4, for paragraph (4) substitute—

“(4) For the purposes of paragraphs (1)(c) and (d) and paragraphs (2) and (3), the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if —

- (a) they exceed the maximum level of resources which a United Kingdom national and his family members may possess if he is to become eligible for social assistance under the United Kingdom benefit system; or
- (b) paragraph (a) does not apply but, taking into account the personal situation of the person concerned and, where applicable, any family members, it appears to the decision maker that the resources of the person or persons concerned should be regarded as sufficient.”

(3) In regulation 8, at paragraph 2(a) for “an EEA State” substitute “a country other than the United Kingdom”.

(a) S.I. 2000/1813.

(b) 1972 c.68.

(c) S.I. 2006/1003, amended by S.I. 2009/1117 and S.I. 2011/544.

(4) In regulation 12, for paragraph (1)(b) substitute—

“(b) the family member will be accompanying the EEA national to the United Kingdom or joining the EEA national there.”.

Home Office
9th May 2011

Damian Green
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) as amended, 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 (OJ L 158, 30.4.2004) (“the Directive”).

Amongst other things, the Directive sets out the circumstances in which Union citizens shall have a right to reside on the territory of another Member State for a period of longer than three months. Two of those circumstances require that the Union citizen have sufficient resources for him or herself and his or her family members not to become a burden on the social assistance system of the host Member State. Article 8(4) of the Directive states that Member States may not lay down a fixed amount which they regard as “sufficient resources” but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance.

Regulation 2(2) amends regulation 4(4) of the 2006 Regulations to reflect current practice in this regard and make clear that the resources of a person (and where applicable any family members) shall be deemed sufficient if either (i) they exceed the maximum level of resources which a United Kingdom national (and his or her family members) may possess if he or she is to become eligible for social assistance under the United Kingdom benefit system, or (ii) where that is not the case, it appears to the decision maker, taking into account the personal situation of the person concerned (and where applicable any family members), that the resources of that person or those persons should be regarded as sufficient.

Article 3(1) of the Directive provides that the Directive shall apply 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 the case of *Metock* (case C-127/08) the Court of Justice of the European Union held that the rights of accompanying or joining family members apply irrespective of whether the family member is already residing lawfully in another Member State with the Union citizen (or was so residing prior to moving to the host Member State). *Regulation 2(3) and (4)* makes changes to the 2006 Regulations to reflect that judgment.

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