

EUROPEAN ECONOMIC AREA AND SWISS NATIONALS

GENERAL INFORMATION

1. With the implementation of the European Economic Area (EEA) agreement on 1 January 1994, existing EC rights of free movement and residence were extended to nationals of five European Free Trade Association countries; Austria, Finland, Iceland, Norway and Sweden. Since then the European Union has expanded to cover 27 Member States. This includes the 10 countries which joined in May 2004 as well as Romania and Bulgaria which joined on 1 January 2007.

Directive 2004/38/EC governs the free movement rights of all EEA nationals and their family members. This Directive consolidates all previous directives and European Court of Justice (ECJ) case law in this area. All member states were required to implement the directive by 30 April 2006. These rights have been transposed into UK law by means of the Immigration (European Economic Area) Regulations 2006.

2. An agreement between Switzerland and the EC on the free movement of persons entered into force on 1 June 2002. The agreement confers on Swiss nationals and their family members broadly similar rights of entry into and residence in the United Kingdom as are enjoyed by EEA nationals and their family members. (The agreement also confers rights of entry and residence on employees of Swiss nationals or Swiss companies that provide or seek to provide services in the United Kingdom and send their employees to the United Kingdom for that purpose. The **Immigration (European Economic Area) Regulations 2006** treats Swiss nationals *as if they were* EEA nationals. In the remainder of this instruction, except paragraph 5, "EEA national" includes a citizen of Switzerland.
3. There is no substantive immigration control of EEA nationals, who are admitted freely on production of a valid EEA passport or identity card. Those exercising EEA free movement rights do not require leave to enter and their passports are not endorsed. They and their dependants may remain here to work/be self employed (without requiring work permits) and, provided they are not dependant on social security, may reside as students or on the basis that they are self-sufficient. EEA nationals may still be excluded or deported but only on the grounds of public policy, public health or public security.
4. Applications for Registration Certificates (formerly residence permits) from EEA nationals are dealt with by the European Casework Group.

THE NATURE AND SCOPE OF EEA FREE MOVEMENT RIGHTS

5. Who is an EEA national?

5.1 The EEA comprises the Member States of the EU together with Iceland (from 1 January 1994), Norway (from 1 January 1994) and Liechtenstein (from 1 May 1995).

5.2 The Member States of the EC, and the dates on which they joined, are set out below:

Austria (1.1.95)*
Belgium (1.1.58)
Bulgaria (1.1.07)
Lithuania (1.5.04)
Cyprus (1.5.04)
Czech Republic (1.5.04)
Denmark (1.1.73)
Estonia (1.5.04)
Finland (1.1.95)*
France (1.1.58)
Germany (1.1.58)
Greece (1.1.81)
Hungary (1.5.04)
Irish Republic (1.1.73)
Italy (1.1.58)
Latvia (1.5.04)
Luxembourg (1.1.58)
Malta (1.5.04)
Netherlands (1.1.58)
Poland (1.5.04)
Portugal (1.1.86)
Romania (1.1.07)
Slovakia (1.5.04)
Slovenia (1.5.04)
Spain (1.1.86)
Sweden (1.1.95)*
United Kingdom (1.1.73)

(* party to the EEA Agreement since 1 January 1994)

5.3 In general, a citizen of an EEA country will have been entitled to exercise all free movement rights conferred by the EC Treaty, as extended, from the date on which his or her country joined the Community or became a party to the Agreement, whichever was earlier. However:

- **Protocol 2** to the **1972 Treaty of Accession** provided that Danish nationals "resident" in the Faroe Islands would be "nationals of a Member State" for EC Treaty purposes only from the date on which the "original Treaties become applicable to those Islands". This has not happened. So Danish nationals resident in the Faroe Islands, although in every other sense citizens of Denmark, are not "nationals of a

Member State" for Community law purposes and have no rights of free movement within the EEA

- The only people who are "nationals of a Member State" by virtue of a United Kingdom connection, and thus (in general) entitled to free movement under the EC Treaty, are British citizens, British overseas territories citizens who derive their citizenship from a Gibraltar connection and British subjects under **Part IV** of the British Nationality Act 1981 having the right of abode under **s.2** of the **Immigration Act 1971**. **Protocol 3** to the **1972 Treaty of Accession** further excludes from the scope of the free movement provisions those British citizens who are "from" the Channel Islands or the Isle of Man. For the particulars, see "**UNITED KINGDOM NATIONAL**"
- UK nationals cannot exercise EEA free movement rights in the UK (but see paragraph 7, below).
- Although, after 1 January 1986, Spanish and Portuguese nationals were free to establish themselves in a business or self-employed occupation, or otherwise to provide or receive services for remuneration in other parts of the EC, they did not benefit from the free movement of labour provisions in the EC Treaty until 1 January 1992. Before that date, those wishing to take waged or salaried employment in the UK required a work permit or had to qualify for entry under the Immigration Rules relating to permit-free employment
- Citizens of the Irish Republic, whether exercising EEA free movement rights or not, are not normally subject to any form of immigration control on arrival in the UK because of the Republic's inclusion in the Common Travel Area (**s.1(3), Immigration Act 1971**)
- Nationals of States which joined the EEA on 1 May 2004 (but not nationals of Cyprus or Malta) remain subject to certain transitional restrictions on their ability to reside in the United Kingdom as workers. The restrictions are detailed in the **Accession (Immigration and Worker Registration) Regulations 2004** as amended. Whilst subject to these restrictions, neither these nationals nor their family members are entitled to EEA residence permits or documents. For further details please see Chapter 7 of the European Casework Instructions, available on Knowledge Base
- Nationals of Romania and Bulgaria who joined on 1 January 2007 are subject to transitional arrangements regarding their access to the UK labour market. The restrictions are detailed in the **Accession (Immigration and Worker Authorisation) Regulations 2006**. For further details please see Chapter 7 of

the European Casework Instructions, available on Knowledge Base.

6. **Which categories of EEA nationals and their family members have the right to reside in the UK?**

A. **Initial right of residence (for up to 3 months)**

6.1 A right to reside in the UK for an initial period of up to 3 months is enjoyed by all EEA nationals and their family members as described in paragraph 6.2.5 below provided they have an identity card or passport and sufficient resources to avoid becoming an unreasonable burden on the UK's social assistance system. This right of residence is not conditional on, for example, being a worker or engaging in any other form of activity.

B. **Extended right of residence (for a period exceeding 3 months)**

6.2 The right to reside in the UK for a period exceeding 3 months is confined to the following:

6.2.1 Workers

6.2.1.1 "Worker" is defined in the Immigration (European Economic Area) Regulations 2006 as 'within the meaning of Article 39 of the Treaty establishing the European Community'. This suggests that a worker is a person who is employed, actually or potentially, under a contract of employment and is not a self-employed person. The European Court of Justice, in Lawrie-Blum [1986] ECR 2121, stated that the essential point is that the person provides services during a given time for and under the direction of another in return for remuneration. The EEA national's position within the organisation, the purpose of the work, the level of income it yields (including whether or not the person has to supplement his or her income by claiming social security benefits), and whether payment is in cash or in kind, are not relevant factors.

6.2.1.2 "Worker" includes:

- job seekers
- those between jobs (for example, women who have ceased employment on

becoming pregnant but who intend to resume work at some point after the birth)

- those undergoing training in their own or another field
- sick, injured and retired workers

6.2.1.3 Reliance on public funds during periods of involuntary unemployment or training does not affect the right to remain under Community law. However, while a person who has been seeking work for more than 6 months may still be a 'worker' for Treaty purposes, the evidential burden shifts to that person to demonstrate that genuine efforts are being made to find employment and that he or she has a realistic prospect of success (R v IAT ex p Antonissen [1991] ECR I-745).

6.2.1.4 Under Article 39(4) of the EC Treaty, the freedom of movement provisions do not apply to certain public servants (e.g. judges). The test is whether the person is responsible for exercising powers conferred by public law or for safeguarding the general interests of the state.

6.2.2 Self-employed and business persons

6.2.2.1 The EC Treaty prohibits restrictions on EEA nationals wishing to establish themselves in business in other EEA countries. This includes the right to take up and pursue activities as a self-employed person and the right to set up and manage undertakings.

6.2.2.2 A company established in an EEA country has the right to transfer its non-EEA national workforce to another EEA country for the duration of a project.

6.2.2.3 Activities connected, even occasionally, with the exercise of official authority in the Member State may be excluded from the right of establishment. What constitutes "official authority" is for each EEA country to decide, but the scope of the exception is limited.

6.2.3 Students

6.2.3.1 For these purposes, a student is a person who-

(i) is enrolled at a public or private establishment included on the Department for Education and Skills' Register of Education and Training Providers for the principal purpose of following a course of study, including vocational training; and

(ii) has comprehensive sickness insurance cover (in respect both of himself and of any accompanying family members) in the United Kingdom; and

(iii) provides the requisite assurance to the Secretary of State that he has sufficient resources to prevent both himself and any accompanying family members from becoming a burden on the social assistance system of the United Kingdom. (NB. This does not preclude reliance on a maintenance grant or government loan if the student is able to secure one.)

6.2.4 Self-sufficient persons

6.2.4.1 EEA nationals who do not work but have sufficient resources to prevent themselves and any accompanying family members from becoming a burden on the UK's social assistance system, and are covered (both in respect of themselves and of any accompanying family members) by comprehensive sickness insurance, have a right of residence under Community law. This right was introduced on 30 June 1992.

6.2.5 Family members of persons in 6.2.1-6.2.4

6.2.5.1 The right of the above EEA nationals to remain for periods in excess of three months is shared by their family members as follows:

- spouse and civil partner;
- direct descendants (including those of the spouse or civil partner) who are under 21 and dependant on the EEA national (or on his spouse or civil partner) – but only

dependant *children* where the EEA national is here exclusively as a student;

- dependant direct relatives in the ascending line of the EEA national or spouse or civil partner –but not where the EEA national is here exclusively as a student;
- Unmarried partners and extended family members are not family members as defined by Article 2 of Directive 2004/38/EC. Rather, for the purposes of free movement rights they are ‘beneficiaries’ (Article 3 of the Directive.) Member States can facilitate entry and residence of such beneficiaries in accordance with their own domestic legislation.

6.2.6 Family members with a ‘retained’ right of residence

6.2.6.1 A family member may *additionally* continue to reside in the UK where:

- the EEA national from whom his right of residence originally derived has died but (i) the family member was residing in the UK *as the family member of an EEA national* for at least a year prior to the death and (ii) the family member would, notionally, have had a right of residence as an EEA worker, self-employed person or self-sufficient person or as the family member of such a person;
- the EEA national, spouse or civil partner from whom his right of residence originally derived *on the basis of direct descent* has died or left the UK, but immediately prior to that event the family member was attending an educational course in the UK and continues to do so;
- the former spouse or civil partner of the qualified person has custody of a child of the qualified person.
- the former spouse or civil partner of the qualified person has the right of access to a child of the qualified person under the

age of 18 and a court has ordered that such access must take place in the United Kingdom.

- his marriage or civil partnership with the EEA national from whom his right of residence originally derived has been terminated but (i) the family member was residing in the host State as *the family member of an EEA national* for at least a year prior to the termination and (ii) the family member would, notionally, have had a right of residence as an EEA worker, self-employed person or self-sufficient person or as the family member of such a person and (iii) either (a) the marriage/civil partnership had lasted for at least 3 years (and for at least one of those years the couple were in the UK) or (b) the family member has custody of a child of the EEA national (as above) or (c) continued residence in the UK is warranted by particularly difficult circumstances (for example by being the victim of domestic violence).

C. Right to permanent residence

6.3 Prior to the introduction of Directive 2004/38/EC, the UK was able to grant EEA nationals ILR under paragraph 255 of the Immigration Rules. This has now been repealed as permanent residence is provided for under Article 16 of the Directive. This has been transposed into UK legislation as Regulation 15 of the Immigration (European Economic Area) Regulations 2006. The following have the right under EC law (as extended) to reside permanently in the UK:

6.3.1 EEA nationals who have remained in the UK in accordance with any of paragraphs 6.2.1-6.2.4 above for a continuous period of 5 years.

6.3.1.1 For this purpose and for the purposes of paragraphs 6.3.2 and 6.3.6 below, continuity of residence is not affected by:

- periods of absence from the UK which do not exceed 6 months in total in any year;
- periods of absence from the UK on military service; or
- any one absence from the UK not

exceeding 12 months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

6.3.2 Family members who have remained in the UK in accordance with paragraph 6.2.5 above for a continuous period of 5 years.

Family members who have resided in accordance with the Immigration (European Economic Area) Regulations 2006 for a continuous period of 5 years are deemed to have acquired permanent residence.

6.3.3 Former self-employed EEA nationals who have retired

6.3.3.1 An EEA national will qualify for permanent residence on this basis if he or she comes within one of the following categories:

- The person has reached the age at which he or she is entitled to a state pension on terminating activity as a self-employed person. Such activity was pursued in the United Kingdom for at least 12 months prior to its termination. The person has been continuously resident in the United Kingdom for at least three years.
- The person has resided continuously in the United Kingdom for more than two years, and has terminated activity as a self-employed person as a result of a permanent incapacity to work. (If such incapacity is the result of an accident at work or an occupational illness which entitles the person to a pension payable in whole or in part by the State, there is no condition as to the length of residence.)
- The person has been continuously resident and continuously active as a self-employed person in the United Kingdom for three years and is active as a self-employed person in the territory of another EEA State whilst residing in the United Kingdom and returning to his/her residence at least once a week

6.3.3.2 If the person is the spouse or civil partner of a United Kingdom national, the conditions as to the length of residence and activity in bullet point one do not apply and the condition as to the length of residence in bullet point two does not apply.

6.3.3.3 For the purposes of bullet points one and two, periods of activity completed in an EEA State by a person to whom the second limb of bullet point three applies are to be considered as having been completed in the United Kingdom.

6.3.3.4 For the purposes of bullet point one, periods of absence from the United Kingdom on military service are not to be taken into account. Periods of inactivity caused by circumstances outside control of the self-employed person and periods of inactivity caused by illness or accident are to be treated as periods of activity as a self-employed person.

6.3.4 Family members of former self-employed EEA nationals who have retired

6.3.4.1 A family member of a person mentioned in paragraph 6.2 has a right to permanent residence in the United Kingdom if he or she resided with the self-employed person immediately before that person ceased activity in the United Kingdom.

6.3.5 Family members of former self-employed EEA nationals who have died

6.3.5.1 A surviving family member of a former self-employed EEA national who has died has a right to permanent residence in the United Kingdom if he or she resided with the self-employed person immediately before that person's death and either

- the self-employed person lived in the United Kingdom for a continuous period of at least the 2 years immediately before death; or

- the death was the result of an accident at work or an occupational disease; or
- the surviving spouse is a United Kingdom national

6.3.5.2 Periods of absence from the United Kingdom which do not exceed 3 months in any year or periods of absence from the United Kingdom on military service are not to be taken into account.

6.3.6 EEA nationals who have retired from salaried employment

6.3.6.1 An EEA national who has retired from salaried employment has a right to permanent residence in the United Kingdom if he or she:

- has been continuously resident in the United Kingdom for at least 3 years, has been in employment in the United Kingdom or any other Member State of the EEA for at least 12 months, and has now reached the age of entitlement to a state retirement pension; or
- has ceased to be employed owing to a permanent incapacity for work arising out of an accident at work or an occupational disease giving rise to an entitlement to a state disability pension; or
- has ceased to be employed due to a permanent incapacity for work, having by then resided in the United Kingdom for a continuous period of at least 2 years

6.3.6.2 The conditions as to length of residence and employment mentioned in the first and third bullet points do not apply if the former worker's spouse is a United Kingdom national.

6.3.7 Family members of EEA nationals who have a) retired from salaried employment or b) died whilst so employed

6.3.7.1 The family members of a person mentioned in paragraph 6.3.6 who are living with him in the

United Kingdom are also entitled to permanent residence. Their entitlement continues even after the EEA national has died.

6.3.7.2 If the EEA national dies during his or her working life, surviving family members may remain permanently provided:

- the EEA national had, by the time of death, resided continuously in the United Kingdom for at least 2 years; or
- the death resulted from an accident at work or an occupational disease.

6.3.8 Family members with a 'retained' right of residence

6.3.8.1 A person who has resided in the UK for 5 years with a retained right of residence as the family member of an EEA national, in accordance with paragraph 6.2.6 above, acquires permanent residence.

6.4 The right to permanent residence is lost following any absence from the United Kingdom exceeding 2 consecutive years.

7. Family members of United Kingdom nationals

7.1 *British* citizens within the UK are not normally exercising their rights under the EC Treaty and so cannot demand the advantages of Community law for their non-British family members (Morson and Jhanjan v The Netherlands [1983] 2 CMLR 221). Such family members who wish to enter or remain in the United Kingdom will usually need to obtain leave in accordance with the Immigration Rules. However, where a British citizen is or has been exercising free movement rights as a worker or self-employed person in another EEA country (and, where the family member concerned is a spouse or civil partner, s/he is or was living with the British citizen in the other EEA country), he or she will acquire the right *under EC law* to be accompanied back to the UK by his or her family members. The family member of a British citizen in these circumstances will have the same right to enter and remain as would have been the case if the British citizen had instead been a national of some other EEA State. (**Regulation 9** of the **2006 Regulations** refers.)

EEA FREE MOVEMENT RIGHTS AND THE BNA 1981

8. Are persons exercising EEA free movement rights "subject under the immigration laws to any restriction on the period for which [they] might remain in the United Kingdom"?

A. WHERE THE RELEVANT DATE WAS BEFORE 2 OCTOBER 2000

8.1 Evidence that the person concerned was exercising any description of EEA free movement right in the UK on the relevant date should be accepted as evidence that he or she was NOT, then, "subject under the immigration laws to any restriction on the period for which [they] might remain in the United Kingdom".

B. WHERE THE RELEVANT DATE WAS BETWEEN 2 OCTOBER 2000 AND 30 APRIL 2006

8.2 **Regulation 8 of the Immigration (European Economic Area) Regulations 2000** provided that, for the purposes of the BNA 1981, those having a conditional right of residence under EC law - essentially, "workers", self-employed and business persons, students and self-sufficient persons (see section 6.2) – were not, by virtue of that fact, to be considered resident in the United Kingdom without restriction under the immigration laws on the period for which they might remain. However, those whose right to remain under Community law was unconditional (essentially, retired EEA nationals and the family members of EEA nationals who had retired or died – see 6.3.3-6.3.7 above) AND those who had been granted permission to remain indefinitely under **Immigration Rules HC395 paragraph 255** were to be regarded for such purposes as resident here without time restrictions.

8.3 The **2000 Regulations** did not affect the position of EEA nationals entitled to remain indefinitely on some other basis, for example because they had been granted indefinite leave to remain under some other provision of the **Immigration Rules**, were entitled by virtue of diplomatic status to exemption from UK immigration control or because, as Irish nationals, they benefit under the Common Travel Area provisions. Persons in these categories should be regarded as having been free from any restriction under the immigration laws on the period for which they may remain.

C. WHERE THE RELEVANT DATE WAS AFTER 30 APRIL 2006

8.4 **Paragraph 2 of Schedule 2 to the Immigration (European Economic Area) Regulations 2006** provided that, for the purposes of the BNA 1981, those having a conditional right of residence under EC law – essentially, "workers", self-employed and business persons, students and self-sufficient persons - were

not, by virtue of that fact, to be considered resident in the United Kingdom without restriction under the immigration laws on the period for which they may remain. However, the following people, whose right to remain under Community law is unconditional, are to be regarded for such purposes as resident here without time restrictions:

- retired EEA nationals and the family members of EEA nationals who had retired or died (see 6.3.3 to 6.3.7 above) and
- those who had been exercising an EC free movement right for 5 years or more (see 6.3.1 – 6.3.2).

8.5 The **2006 Regulations** do not affect the position of EEA nationals entitled to remain indefinitely on some other basis, for example because they have been granted indefinite leave to remain under the **Immigration Rules**, are entitled by virtue of diplomatic status to exemption from UK immigration control or because, as Irish nationals, they benefit under the Common Travel Area provisions. Persons in these categories should continue to be regarded as free from any restriction under the immigration laws on the period for which they may remain.

D. ILLUSTRATIONS

8.6 The following examples may help to illustrate the position:

- a. Child born legitimately in UK in 1992 to a German father employed at the BBC in London, and his Indian wife. At the time of the birth the couple both had residence permits/documents, but not permission to remain indefinitely. First passport applied for in 1993: child to be treated as a British citizen, **s.1(1)(b)** BNA 1981. Second passport applied for in 2003: child to be treated as a British citizen, **s.1(1)(b)** BNA 1981.
- b. Second child born to the couple in Example a, again in the UK, in September 2000. The parents' circumstances continue as previously, i.e. father in employment but no permission to remain indefinitely. First passport applied for in November 2000: child to be treated as a British citizen, **s.1(1)(b)**, BNA 1981.
- c. Third child born to the couple in Example a, again in the UK, in 2002. Again, the parents' circumstances are as in Example A. Pursuant to the Regulations, neither parent can be considered to have been settled at the time of this child's birth. The child is not, therefore, a British citizen and, as such, is ineligible for a UK passport.

- d. A Belgian national applied for naturalisation on 10 September 2000. He has been in salaried employment in the United Kingdom since 1994, but, as at 10 September 2000, had not been granted permission to remain indefinitely. Prima facie he is eligible for naturalisation because, applying the policy described above, we should treat him as having been resident without time restrictions until the entry into force of the **Immigration (European Economic Area) Regulations 2000** on 2 October 2000.
 - e. A French national whose circumstances are similar to those of the applicant Example d applied for naturalisation on 10 October 2000. By this time the **Immigration (European Economic Area) Regulations 2000** had come into force and, pursuant to **Regulation 8** of those Regulations, the applicant could not then be treated as free of immigration time restrictions. This application therefore falls for refusal.
 - f. A child is born in the United Kingdom on 10 May 2006 to a Portuguese mother and an Indian father. Neither parent has been granted ILR but, by the time of the birth, the mother has been here in exercise of her EEA free movement rights for 6 years. The child is a British citizen at birth under s.1(1)(b) BNA 1981.
 - g. An Italian national applies for naturalisation under s.6(1) BNA 1981 on 4 May 2006. By that date he has been exercising EEA free movement rights in the UK, as a worker, for 6 years. However, he has never previously applied for or been granted ILR. The effect of the **Immigration (European Economic Area) Regulations 2000** and the **Immigration (European Economic Area) Regulations 2006** is that, for BNA purposes, he has been free of immigration time restrictions since 30 April 2006 but was not free of immigration time restrictions before that date. Consideration should be given to the possible exercise of discretion under paragraph 2(c) of Schedule 1 to the BNA 1981 to accept a shorter period of freedom from immigration time restrictions than the 12 months normally required (see Chapter 18, Annex B, paragraph 7.4).
9. **Should an EEA national who remains in the United Kingdom without a right of residence under Community law, and without leave under the Immigration Act, be regarded as "subject under the immigration laws to any restriction on the period for which he**

might remain in the United Kingdom"?

9.1 Yes.

10. **Should an EEA national who remains in the United Kingdom *without* a right of residence under Community law, and *without* leave under the Immigration Act, be regarded as "in breach of the immigration laws"?**

10.1 **Section 11** of the **Nationality, Immigration and Asylum Act 2002** provides in general terms that a person will be "in the United Kingdom in breach of the immigration laws" at any time when he (i) requires permission to be in the UK but (ii) does not have such permission. The provision is deemed always to have had effect, *except* in relation to persons who had rights of residence here under Community law either (a) on 7 November 2002 or (b) at any time following their most recent arrival in the UK before that date. Where either (a) or (b) applies, the person should only be regarded as having remained "in breach of the immigration laws" before 7 November 2002 if s/he was then in the UK in defiance of a deportation or removal order.

10.2 The following examples may be helpful:

A. Paolo, an Italian citizen, came to the UK for employment in 1997. He voluntarily left work on 1 December 2000. No deportation or removal order was made against him, and he has remained without any right of residence under Community law, and without leave, ever since. *Paolo has been "in the United Kingdom in breach of the immigration laws" only since 7 November 2002, when s.11 of the 2002 Act entered into force. His residence here between 1 December 2000 and 6 November 2002, although unauthorised, should not be regarded as a breach.*

B. Sabine, a French citizen, enrolled as a student in October 1990. Her course ended in June 1993. She then remained in the UK without leave and without any entitlement under Community law. No deportation or removal order was made against her. In 1996 she commenced employment, and this has continued to the present day. *Sabine should not be treated as having been "in the United Kingdom in breach of the immigration laws" at any time.*

C. Colette, a Belgian citizen, came to the UK for a holiday in August 2003 but then remained without permission or entitlement under Community law. *Any residence in the UK after her entitlement under Community law came to an end was residence "in breach of the immigration laws".*

- D. Tomas, a Swedish citizen, came to the UK in 1999. He never had any leave to remain or Community law right to be here, and on 16 April 2001 an order for his removal was made under the **Immigration (European Economic Area) Regulations 2000**. Tomas has nevertheless continued to reside in the UK. *He has been "in the United Kingdom in breach of the immigration laws" throughout the period from 16 April 2001.*

11. **What is the position of EEA nationals and their family members in the Channel Islands and the Isle of Man?**

11.1 **Article 299(6)(c)** of the **EC Treaty** provides that the Treaty will apply to the Channel Islands and the Isle of Man "only to the extent necessary to ensure the implementation of the arrangements for those islands" set out in **Protocol 3** to the **Treaty of Accession**. No provision is made in the **Protocol** for the free movement provisions of the Treaty to apply in the Islands, so in that respect they are outside its territorial scope. However, **s.7** of the **Immigration Act 1988**, as applied to the Islands, provides that a person may enter and remain in the Islands without leave in circumstances where, if in the UK, that person would have had a Community law right to do so. **Article 4** of the **Protocol** requires the Island authorities to apply "the same treatment to all natural and legal persons of the Community".

11.2 The practical implications are as follows:

- a. The free movement rights conferred on EEA nationals and their families by the **EC Treaty**, as extended by the EEA Agreement, are not enforceable in the Islands (DHSS -v- Barr [1991] ECR I-3479; C-171/96 Roque -v- Lieutenant Governor of Jersey).
- b. Subject to c. below, EEA nationals and their family members may nevertheless enter and reside in the Islands on the same terms as would apply if they were in the UK (see paragraphs 9 and 10 above).
- c. An EEA national may be deported from one or other of the Islands, for reasons other than those of public health, public security or public policy, but only if the deportation order is in such terms as would not interfere with his or her right under Community law to enter and reside in the United Kingdom (Roque).

11.3 **Section 11** of the **Nationality, Immigration and Asylum Act 2002** applies for the purpose of determining whether their residence in the Islands (part of the United Kingdom for nationality

purposes) puts them "in breach of the immigration laws" (see paragraph 11 above).