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STATUTORY INSTRUMENTS

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**2006 No. 3317**

**The Accession (Immigration and  
Worker Authorisation) Regulations 2006**

**PART 3**

**Accession State worker authorisation**

**Requirement for an accession State national subject to worker authorisation to be authorised to work**

**9.—(1)** An accession State national subject to worker authorisation shall only be authorised to work in the United Kingdom during the accession period if he holds an accession worker authorisation document and is working in accordance with the conditions set out in that document.

(2) For the purpose of these Regulations, an accession worker authorisation document is—

- (a) a passport or other travel document endorsed before 1st January 2007 to show that the holder has leave to enter or remain in the United Kingdom under the 1971 Act, subject to a condition restricting his employment in the United Kingdom to a particular employer or category of employment;
- (b) a seasonal agricultural work card, except where the holder of the card has a document mentioned in sub-paragraph (a) giving him leave to enter the United Kingdom as a seasonal agricultural worker; or
- (c) an accession worker card issued in accordance with regulation 11.

(3) But a document shall cease to be treated as an accession worker authorisation document under paragraph (2)—

- (a) in the case of a document mentioned in paragraph (2)(a), at the end of the period for which leave to enter or remain is given;
- (b) in the case of a seasonal agricultural work card, at the end of the period of six months beginning with the date on which the holder of the card begins working for the agricultural employer specified in the card;
- (c) in the case of an accession worker card, on the expiry of the card under regulation 11(7).

(4) For the purpose of this regulation—

- (a) “seasonal agricultural work card” means a Home Office work card issued by the operator of a seasonal agricultural workers scheme approved by the Secretary of State for the purpose of paragraph 104(ii) of the immigration rules;
- (b) the reference to a travel document other than a passport is a reference to a document which relates to a national of Bulgaria or Romania and which is designed to serve the same purpose as a passport.

### **Application for an accession worker card**

**10.**—(1) An application for an accession worker card may be made by an accession State national subject to worker authorisation who wishes to work for an employer in the United Kingdom if—

- (a) the employment concerned falls within an authorised category of employment; or
- (b) the applicant is an authorised family member.

(2) The application shall be in writing and shall be made to the Secretary of State.

(3) The application shall state—

- (a) the name, address, and date of birth of the applicant;
- (b) the name and address of the employer for whom the applicant wishes to work; and
- (c) unless the applicant is an authorised family member, the authorised category of employment covered by the application.

(4) The application shall be accompanied by—

- (a) the applicant’s national identity card or passport; and
- (b) two passport size photographs of the applicant.

(5) Where the applicant is not an authorised family member, the application shall, in addition to the documents required by paragraph (4), be accompanied by—

- (a) where the relevant requirements for the authorised category of employment specified in the application require the applicant to hold a letter of approval under the work permit arrangements, that letter;
- (b) where sub-paragraph (a) does not apply, a letter from the employer specified in the application confirming that the applicant has an offer of employment with the employer; and
- (c) any other proof that the applicant wishes to provide to establish that he meets the relevant requirements.

(6) Where the applicant is an authorised family member, the application shall, in addition to the documents required by paragraph (4), be accompanied by—

- (a) a letter from the employer specified in the application confirming that the applicant has an offer of employment with the employer; and
- (b) proof that the applicant is an authorised family member.

(7) In this regulation “address” means, in relation to an employer which is a body corporate or partnership, the head or main office of that employer.

### **Issuing an accession worker card etc**

**11.**—(1) Subject to paragraph (2), the Secretary of State shall issue an accession worker card pursuant to an application made in accordance with regulation 10 if he is satisfied that the applicant is an accession State national subject to worker authorisation who—

- (a) is an authorised family member; or
- (b) meets the relevant requirements for the authorised category of employment covered by the application.

(2) The Secretary of State shall not issue an accession worker card if he has decided to remove the applicant from the United Kingdom under regulation 19(3)(b) of the 2006 Regulations (removal on grounds of public policy, public security or public health).

(3) An accession worker card issued under this regulation to an authorised family member shall include a condition restricting the applicant's employment to the employer specified in the application.

(4) An accession worker card issued under this regulation pursuant to an application that was accompanied by a letter of approval under the work permit arrangements shall include the following conditions—

- (a) a condition restricting the applicant's employment to the employer specified in the application and any secondary employer; and
- (b) a condition restricting him to the type of employment specified in the letter of approval under the work permit arrangements.

(5) In any other case, an accession worker card issued under this regulation shall include the following conditions—

- (a) a condition restricting the applicant's employment to the employer specified in the application; and
- (b) a condition restricting him to the authorised category of employment specified in the application.

(6) An accession worker card issued under this regulation shall include a photograph of the applicant and shall set out—

- (a) the name, nationality and date of birth of the applicant;
- (b) the name and address of the employer specified in the application;
- (c) the conditions required by paragraph (3), (4) or (5), as the case may be; and
- (d) the date on which the card was issued.

(7) An accession worker card shall expire if the holder of the card ceases working for the employer specified in the application.

(8) Where the Secretary of State is not satisfied as mentioned in paragraph (1) or where paragraph (2) applies, he shall refuse the application and issue a notice of refusal setting out the reasons for the refusal.

(9) An accession worker card or notice of refusal issued under this regulation shall be sent to the applicant by post together with the identity card or passport that accompanied the application.

(10) In this regulation, "secondary employer" means, in relation to an applicant, an employer who is not specified in his application and who employs the applicant for no more than 20 hours a week when the applicant is not working for the employer who is specified in the application.

### **Unauthorised employment of accession State national – employer offence**

**12.—**(1) Subject to paragraphs (2) and (3), an employer who employs an accession State national subject to worker authorisation during the accession period shall be guilty of an offence if—

- (a) the employee does not hold an accession worker authorisation document; or
- (b) the employee's accession worker authorisation document is subject to conditions that preclude him from taking up the employment.

(2) Subject to paragraph (4), in proceedings under this regulation it shall be a defence to prove that before the employment began there was produced to the employer a document that appeared to him to be a registration certificate issued to the worker and—

- (a) the registration certificate contained a statement that the worker has unconditional access to the United Kingdom labour market; or

(b) the registration certificate contained a statement that the worker is a student who has access to the United Kingdom labour market for 20 hours a week and the employer has not employed that worker for more than 20 hours a week.

(3) Subject to paragraph (4), in proceedings under this regulation it shall be a defence to prove that before the employment began there was produced to the employer a document that appeared to him to be an accession worker authorisation document that authorised the worker to take up the employment.

(4) The defence afforded by paragraph (2) and (3) shall not be available in any case where the employer—

- (a) did not take and retain a copy of the relevant document; or
- (b) knew that his employment of the worker constituted an offence under this regulation.

(5) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where an offence under this regulation committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in such a capacity,

he, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(8) Where an offence under this regulation is committed by a partnership (other than a limited partnership) each partner shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(9) Paragraph (6) shall have effect in relation to a limited partnership as if—

- (a) a reference to a body corporate were a reference to a limited partnership; and
- (b) a reference to an officer of the body corporate were a reference to a partner.

(10) An offence under this regulation shall be treated as—

- (a) a relevant offence for the purpose of sections 28B and 28D of the 1971 Act<sup>(1)</sup> (search, entry and arrest);
- (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H<sup>(2)</sup> of that Act (search after arrest); and
- (c) an offence referred to in section 28AA<sup>(3)</sup> of that Act (arrest with warrant).

### **Unauthorised working by accession State national – employee offence**

**13.**—(1) Subject to paragraph (2), an accession State national subject to worker authorisation who works in the United Kingdom during the accession period shall be guilty of an offence if—

- (a) he does not hold an accession worker authorisation document; or

(1) Section 28B was inserted by section 129 of the Immigration and Asylum Act 1999 (c.33) and section 28D was inserted by section 131 of that Act; both sections have been amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002 (c.41).

(2) Sections 28E, 28G and 28 H were inserted by sections 132, 134 and 135 of the Immigration and Asylum Act 1999(c.33) respectively.

(3) Section 28AA was inserted by section 152 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

(b) he is working in breach of the conditions set out in his accession worker authorisation document.

(2) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for not more than three months, or both.

(3) A constable or immigration officer who has reason to believe that a person has committed an offence under this regulation may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a penalty in accordance with the notice.

(4) The penalty payable in pursuance of a notice under paragraph (3) is £1000 and shall be payable to the Secretary of State.

(5) Where a person is given a notice under paragraph (3) in respect of an offence—

(a) no proceedings may be instituted for that offence before the expiration of the period of twenty one days following the date of the notice; and

(b) he may not be convicted of that offence if before the expiration of that period he pays the penalty in accordance with the notice.

(6) A notice under paragraph (3) must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(7) A notice under paragraph (3) must also state—

(a) the period during which, by virtue of paragraph (5), proceedings will not be instituted for the offence;

(b) the amount of the penalty; and

(c) that the penalty is payable to the Secretary of State at the address specified in the notice.

(8) Without prejudice to payment by any other method, payment of a penalty in pursuance of a notice under paragraph (3) may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the Secretary of State at the address specified in the notice.

(9) Where a letter is sent in accordance with paragraph (8) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

### **Deception – employee offence**

**14.**—(1) A person is guilty of an offence if, by means which include deception by him, he obtains or seeks to obtain an accession worker card.

(2) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for not more than three months, or both.

### **Offences under regulations 13 and 14 – search, entry and arrest**

**15.** An offence under regulation 13 or 14 shall be treated as—

(a) a relevant offence for the purpose of sections 28B and 28D of the 1971 Act (search, entry and arrest);

(b) an offence under Part III of that Act (criminal proceedings) for the purpose of sections 28E, 28G and 28H of that Act (search after arrest); and

- (c) an offence under section 24(1)(b) of that Act for the purpose of sections 28A, 28CA and 28FA(4) of that Act (arrest without warrant, entry of business premises to arrest and search for personal records).

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(4) Section 28A was inserted by section 128 of the Immigration and Asylum Act 1999 (c.33) and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002 (c.41); sections 28CA and 28FA were inserted by sections 153 and 154 of the Nationality, Immigration and Asylum Act 2002 respectively.