

**EXPLANATORY MEMORANDUM TO**  
**THE ACCESSION (IMMIGRATION AND WORKER AUTHORISATION)**  
**REGULATIONS 2006**

**2006 No. 3317**

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 On 1<sup>st</sup> January 2007 Bulgaria and Romania accede to the European Union. These draft Regulations make transitional provision to take account of the free movement rights that nationals from these States will have on accession. They also set up a worker authorisation scheme restricting access to the United Kingdom labour market by Bulgarian and Romanian nationals during a five year transitional period (from 1<sup>st</sup> January 2007 to 31<sup>st</sup> December 2011).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Background**

- 4.1 The Treaty of Accession for Bulgaria and Romania (signed at Luxembourg on 25<sup>th</sup> April 2005) provided for the accession of Bulgaria and Romania to the European Union on 1<sup>st</sup> January 2007. On accession Bulgarian and Romanian nationals will generally enjoy the same rights as other EU nationals, including the rights to enter and reside in other member States. Annexes VI and VII to the Act of Accession, however, provide that during a transitional period of five years the existing member States can regulate access to their labour markets by Bulgarian and Romanian workers and restrict their accompanying rights of residence.
- 4.2 The right of EU nationals to enter and reside in the United Kingdom are set out in the Immigration (European Economic Area) Regulations 2006/1003. These rights will generally apply to Bulgarian and Romanian nationals from 1<sup>st</sup> January 2007. Before that date the immigration position of such nationals will be regulated under the Immigration Act 1971. Regulation 8 of these draft Regulations sets out some transitional provisions to deal with the position of Bulgarian and Romanian nationals who are currently in the United Kingdom and regulated under the 1971 Act but will from 1<sup>st</sup> January 2007 be regulated under the 2006 Regulations.
- 4.3 Part 3 of these draft Regulations regulates access to the UK labour market by Bulgarian and Romanian nationals in accordance with the Annexes VI and VII of the Act of Accession. Bulgarian and Romanian nationals who are covered by the work authorisation scheme set out in Part 3 will require prior authorisation to work in the United Kingdom. And under regulation 6 of the draft Regulations

such nationals will only have a right to reside in the United Kingdom as workers under the Immigration (European Economic Area) Regulations 2006 whilst working in accordance with the work authorisation scheme.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 Liam Byrne has made the following statement regarding Human Rights:

In my view the provisions of the Accession (Immigration and Worker Authorisation) Regulations 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 These draft Regulations provide domestic legislative base for Bulgarian and Romanian nationals wishing to reside in the United Kingdom following their accession to the United Kingdom to ensure a smooth transition from the 1971 Immigration Act regime of control to EU rules on free movement and in particular the creation of a regime restricting access to the UK labour market for workers from Bulgaria and Romania during a transitional period.

7.2 Part 1 contains the general provisions of the draft Regulations. Regulation 2, in particular, defines “accession State national subject to worker authorisation” – Bulgarian and Romanian nationals falling within this definition will be required to obtain permission to work in the United Kingdom. Regulations 2(2) to 2(13) define those that will be exempt from the requirement to obtain such permission. For example, those with permission to work prior to accession continue to have this permission.

7.3 Part 2 of the draft Regulations provides that a Bulgarian or Romanian national subject to the requirement to obtain permission to work will only enjoy a right to reside on the basis of his or her worker status if he or she is in possession of the required documentation (regulation 6). It also sets out the terms on when we will issue a registration certificate confirming a community right as a worker and providing unrestricted right to access the labour market, or in case of a student confirmation of a limited right to access the labour market (regulation 7). Regulation 8 sets out general transitional provisions, as described above.

7.4 Part 3 of the draft Regulations sets out the terms on which a worker requiring authorisation to work can obtain such authorisation (regulations 9 to 11 and Schedule 1). The effect of the Regulations is that those Bulgarian and Romanian nationals subject to the worker authorisation requirement will be required to obtain an accession worker card, unless they already have been granted leave under Immigration Act 1971 for this purpose or have been issued with a work card under the Seasonal Agricultural Workers Scheme. Regulation 12 creates a new offence of employing a Bulgarian or Romanian national who does not have the authority to undertake the employment. The employer can obtain a statutory defence against prosecution by seeing, copying and retaining copies of certain

specified documents. Regulation 13 makes it an offence for a Bulgarian or Romanian national to take employment without authority. Individuals may be provided with the opportunity to discharge their liability to prosecution through the payment of a fixed penalty. Regulation 14 makes it an offence to obtain or seek to obtain an accession worker card by deception.

- 7.5 Regulation 10 and 11 sets out the arrangements for obtaining, and conditions for the issuance of, an accession worker card. Schedule 1 sets out the categories of employment for which an accession worker card may be issued. These follow the existing provisions of the Immigration Rules (HC395) under which a Bulgarian or Romanian worker may be granted leave to enter or remain for a purpose that involves employment. The effect of regulation 10(5) is that employers seeking to employ a Bulgarian or Romanian national in employment that would, prior to Accession, fall to be dealt with under the work permit arrangements will continue to be required to obtain a letter from the Home Office confirming that the requirements of those arrangements have been met. The individual will be able to apply for an accession worker card once the employer has received that letter. It also states an accession workers card will provide details of employer, type of work or occupation for which it has been issued.
- 7.6 Information and guidance for individuals seeking documentation under these arrangements and for employers will be made available before these Regulations come into effect.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument. The effect of these Regulations is that Bulgarian and Romanian nationals continue to be afforded the same degree of access to the labour market post-Accession as they were prior to it. Their provisions in respect of employer liability replicate the existing regime under Section 8 of the 1996 Act. They therefore place no new or additional burden upon business, charities or voluntary bodies

## **9. Contact**

- 9.1 Clinton Nield at the Home Office Tel: 0208 760 8391 or e-mail: [Clinton.Nield2@homeoffice.gsi.gov.uk](mailto:Clinton.Nield2@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.