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STATUTORY INSTRUMENTS

2007 No. 475

IMMIGRATION

The Accession (Immigration and Worker Authorisation) (Amendment) Regulations 2007

Made - - - -	*20th February 2007*
Laid before Parliament	*23rd February 2007*
Coming into force - -	*16th March 2007*

The Secretary of State, being a Minister designated(**1**) for the purpose 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 upon him by that section, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Accession (Immigration and Worker Authorisation) (Amendment) Regulations 2007 and shall come into force on 16th March 2007.

(2) In these Regulations "2006 Accession Regulations" means the Accession (Immigration and Worker Authorisation) Regulations 2006(**3**).

Amendment of the 2006 Accession Regulations

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

(2) In regulation 2 ("Accession State national subject to worker authorisation")—

(a) for paragraph (2) substitute—

"(2) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation if on 31st December 2006 he had leave to enter or remain in the United Kingdom under the 1971 Act that was not subject to any condition restricting his employment or he is given such leave after that date.";

(b) for paragraph (8)(b) substitute —

"(b) a national of Bulgaria or Romania who is not an accession State national subject to worker authorisation solely by virtue of falling within paragraph (10) or (10B).";

(**1**) S.I. 2000/1813 and S.I. 2004/706.
(**2**) 1972 c. 68.
(**3**) S.I. 2006/3317.

(c) for paragraph (10) substitute —

"(10) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is in the United Kingdom as a student and —

(a) holds a registration certificate that includes a statement that he is a student who may work in the United Kingdom whilst a student in accordance with the condition set out in paragraph (10A); and

(b) complies with that condition.

(10A) The condition referred to in paragraph (10) is that the student shall not work for more than 20 hours a week unless —

(a) he is following a course of vocational training and is working as part of that training; or

(b) he is working during his vacation.

(10B) A national of Bulgaria or Romania who ceases to be a student at the end of his course of study is not an accession State national subject to worker authorisation during the period of four months beginning with the date on which his course ends provided he holds a registration certificate that was issued to him before the end of the course that includes a statement that he may work during that period.";

(d) in paragraph (12)(b)(i), for "(10)" substitute "(10B)".

(3) In regulation 3 (authorised family member), for paragraph (1)(b) substitute—

"(b) a national of Bulgaria or Romania who is not an accession State national subject to worker authorisation solely by virtue of falling within paragraph (10) or (10B) of regulation 2.".

(4) In regulation 7 (issuing of registration certificates etc)—

(a) in paragraph (3), after "accession State national subject to worker authorisation" insert "(other than solely by virtue of falling within paragraph (10) or (10B) of regulation 2)";

(b) in paragraph (5)(b), for "regulation 2(10)" substitute "paragraph (10) or (10B) of regulation 2";

(c) in paragraph (6), for "has access to the United Kingdom labour market for 20 hours a week" substitute "may work in the United Kingdom whilst a student in accordance with the condition set out in regulation 2 (10A) and who, on ceasing to be a student, may work during the period referred to in regulation 2(10B)".

(5) In regulation 12(2) (unauthorised employment of accession State national – employer offence), for sub-paragraph (b) substitute —

"(b) the registration certificate contained a statement that the worker is a student who may work in the United Kingdom whilst a student in accordance with the condition set out in regulation 2(10A) and who, on ceasing to be a student, may work during the period referred to in regulation 2(10B), and the employer has not employed that worker otherwise than in accordance with that condition or during that period.".

Amendment of the Accession (Immigration and Worker Registration) Regulations 2004

3. In regulation 2(6)(b) of the Accession (Immigration and Worker Registration) Regulations 2004(**4**), for sub-paragraph (iii) substitute —

"(iii) an accession State national subject to worker authorisation or a national of Bulgaria or Romania who is not an accession State national subject to worker authorisation solely

(**4**) S.I. 2004/1219; regulation 2(6)(b) was substituted by paragraph 1(2)(b) of Schedule 2 to the Accession (Immigration and Worker Authorisation) Regulations 2006/3317.

by virtue of falling within paragraph (10) or (10B) of regulation 2 of the 2006 Accession Regulations.”.

Transitional provisions

4.—(1) For the purpose of regulations 2(10) and (10B) and 12(2) of the 2006 Accession Regulations, as amended by these Regulations, a statement in a registration certificate issued before 16th March 2007 that the holder of the certificate is a student who has access to the United Kingdom labour market for 20 hours a week, shall, on or after that date, be treated as if it were a statement that the holder of the certificate is a student who may work in the United Kingdom whilst a student in accordance with the condition set out in regulation 2 (10A) of those Regulations and who, on ceasing to be a student, may work during the period referred to in regulation 2(10B) of those Regulations.

(2) In paragraph (1) “registration certificate” and “student” shall be interpreted in accordance with regulation 1(2)(o) and (s) of the 2006 Accession Regulations respectively.

Home Office
20th February 2007

Liam Byrne
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Accession (Immigration and Worker Authorisation) Regulations 2006 (the "2006 Accession Regulations") with effect from 16th March 2007.

The 2006 Accession Regulations make provision in relation to the entitlement of nationals of Bulgaria and Romania to reside and work in the United Kingdom on the accession of those States to the European Union on 1st January 2007. In particular, the Regulations restrict access to the United Kingdom labour market by Bulgarian and Romanian nationals. The Accession Treaty for Bulgaria and Romania (signed in Luxembourg on 25th April 2005) provides that existing member States can, as a derogation from the usual position under European Community law, regulate access to their labour markets by Bulgarian and Romanian nationals. The restrictions on access to the United Kingdom labour market in the 2006 Accession Regulations were imposed on the basis of that derogation.

One of the terms of the derogation is that the restrictions imposed on access to the labour market must not be more restrictive than those prevailing on the date of signature of the Accession Treaty. The restrictions imposed in the 2006 Accession Regulations were therefore drafted on the basis of the requirements in the Immigration Rules setting out the practice that was followed under the Immigration Act 1971 in relation to allowing nationals from Bulgaria and Romania to work in the United Kingdom prior to the accession of those States.

In relation to students, however, the restrictions imposed in the 2006 Accession Regulations on working in the United Kingdom are more restrictive than those prevailing before accession. Before accession Bulgarian and Romanian students were allowed to work for 20 hours a week during term time and full time during their vacations or as part of their vocational studies whereas under the 2006 Accession Regulations the 20 hour limit applies during term time and vacations and to students working as part of their vocational studies. In addition, before accession Bulgarian and Romanian students were generally allowed to work for four months after the completion of their studies without the requirement for further leave under the Immigration Act 1971.

Regulation 2(2)(c) of these Regulations therefore amends the 2006 Accession Regulations so that Bulgarian and Romanian students can continue to work full time during their vacations or as part of their vocational training and for four months after the completion of their studies without the need for authorisation under the 2006 Regulations. Consequential amendments to take account of this amendment are made by paragraphs (2)(b) and (d) and (3) to (5) of regulation 2 and regulation 3.

Regulation 4 of these Regulations includes a transitional provision providing that Bulgarian and Romanian students who, before 16th March 2007, have been issued with a registration certificate setting out their right to work 20 hours a week can continue to rely on that certificate for the purpose of exercising their more extensive right to work as a result of the amendments made by these Regulations.

In addition, where on accession (31st December 2006) Bulgarian and Romanian nationals had leave to enter or remain in the United Kingdom that was not subject to any condition restricting their employment, or where they are given such leave after that date, the intention is that they should be exempt from the work authorisation requirements set out in the 2006 Accession Regulations even if that leave subsequently expires. A new paragraph has been substituted for paragraph (2) of regulation 2 of the 2006 Accession Regulations to give effect to this intention (regulation 2(2)(a) of these Regulations).