

EXPLANATORY MEMORANDUM TO
THE ACCESSION (IMMIGRATION AND WORKER AUTHORISATION)
(AMENDMENT) REGULATIONS 2007

2007 No. 475

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 These Regulations make amendments to the Accession (Immigration and Worker Authorisation) Regulations 2006, which were made on 13 December 2006 and entered into force on 1 January 2007. The 2006 Regulations established a worker authorisation regime restricting access to the UK labour market by nationals of Bulgaria and Romania on the accession of those States to the European Union. These Regulations amend that regime to allow Bulgarian and Romanian students to work full time without authorisation in certain circumstances and to exempt those given unconditional leave under the Immigration Act 1971 from the need for authorisation.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 Under the Accession Treaty for Bulgaria and Romania the existing member States are allowed to derogate from the Community rules on the free movement of workers by restricting access to their labour markets by workers from Bulgaria and Romania. Under the Accession Treaty, however, the labour market restrictions must not be more restrictive than those applying before the accession of those States and must cease to apply to workers who have been allowed to work in a member State for a continuous period of 12 months. The restrictions on working set out in the Accession (Immigration and Worker Authorisation) Regulations 2006 do not comply with these requirements of the Accession Treaty, which are Community obligations, in two respects. First, the restrictions in the 2006 Regulations are more restrictive in relation to Bulgarian and Romanian students working in the United Kingdom than those applying before accession insofar as they prevent students working full time during their vacations or a part of their vocational training and for a period after the end of their courses. Secondly, no provision is made in relation to allowing Bulgarian and Romanian nationals working after accession in accordance with unconditional leave under the Immigration Act 1971 to qualify for exemption under the 12 months rule. These Regulations amend the 2006 Regulations to bring them into line with these Accession Treaty requirements.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These Regulations make two substantive changes to the 2006 Regulations.

7.2 Regulation 2(2) of the 2006 Regulations exempted from the work authorisation requirement those Bulgarian and Romanian nationals who have leave to enter or remain in the United Kingdom under the 1971 Act and that leave is not subject to any condition restricting his employment. However, unlike the corresponding provision in the Accession (Immigration and Worker Registration) Regulations 2004, which regulate access to the United Kingdom labour market by eight of the States that acceded to the European Union in 2004, the provision in the 2006 Regulations does not refer to having such leave on a specific date and its effect is that if such leave expires the individual ceases to be exempt from worker authorisation even if he or she has been legally working in the United Kingdom for over 12 months. These Regulations replace regulation 2(2) of the 2006 Regulations with a new provision that exempts Bulgarian and Romanian workers from the need for worker authorisation if they had unconditional leave on accession or are subsequently given such leave. This is similar to the treatment of accession workers under the 2004 Regulations and will avoid any breaches of the 12 months rule in the Accession Treaty.

7.3. The remainder of the amendments are concerned with the degree of restrictions placed on Bulgarian and Romanian students' freedom to take employment. The 2006 Regulations provided for Bulgarian and Romanian students exercising a Treaty right as a student and in possession of a registration certificate confirming that fact to take employment for up to 20 hours a week without requiring work authorisation.

7.4 However, as stated above, the restrictions on labour market access by Bulgarian and Romanian students are more onerous than those that applied to them immediately prior to the date of Accession. It is the Government's practice to allow non-EEA nationals given leave to enter or remain for the purpose of study to engage in full-time employment (i) during their vacation, (ii) for a period of 4 months on completion of their studies, and (iii) if they are in a work placement directly related to a course of vocational training (for example, a sandwich course of study for a nursing qualification). These Regulations amend the 2006 Regulations to provide for Bulgarian and Romanian students to be exempt from work authorisation requirements in these circumstances, and make consequential amendments to the provisions for issuing registration certificates to Bulgarian and Romanian nationals and employers' defence against prosecution under the 2006 Regulations. The amendments are being brought into effect in time for Bulgarian and Romanian students to work full time during their Easter vacation. Guidance for

Bulgarian and Romanian students, and employers, on the effect of these changes will be placed on the Home Office's website.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it places no additional restrictions on access to the labour market and therefore has no impact on business, charities or voluntary bodies.

9. Contact

Ragnar Clifford at the Home Office Tel: 0114 207 6554 or e-mail:

Ragnar.Clifford@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.