
DRAFT STATUTORY INSTRUMENTS

2006 No.

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

PART 1

General

Citation, commencement, interpretation and consequential amendments

1.—(1) These Regulations may be cited as the Accession (Immigration and Worker Authorisation) Regulations 2006 and shall come into force on 1st January 2007.

(2) In these Regulations—

- (a)** “the 1971 Act” means the Immigration Act 1971⁽¹⁾;
- (b)** “the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006⁽²⁾;
- (c)** “accession period” means the period beginning on 1st January 2007 and ending on 31st December 2011;
- (d)** “accession State national subject to worker authorisation” has the meaning given in regulation 2;
- (e)** “accession worker authorisation document” shall be interpreted in accordance with regulation 9(2);
- (f)** “authorised category of employment” means a category of employment listed in the first column of the table in Schedule 1;
- (g)** “authorised family member” has the meaning given in regulation 3;
- (h)** “civil partner” does not include a party to a civil partnership of convenience⁽³⁾;
- (i)** “EEA State” means—
 - (i)** a member State, other than the United Kingdom;
 - (ii)** Norway, Iceland or Liechtenstein;
 - (iii)** Switzerland;
- (j)** “employer” means, in relation to a worker, the person who directly pays the wage or salary of that worker;
- (k)** “family member” shall be interpreted in accordance with regulation 7 of the 2006 Regulations;
- (l)** “highly skilled person” has the meaning given in regulation 4;

⁽¹⁾ 1971 c.77.

⁽²⁾ S.I. 2006/1003.

⁽³⁾ “Civil partner” has the meaning given by Schedule 1 to the Interpretation Act 1978 (c.30), as amended by paragraph 59 of Schedule 27 to the Civil Partnership Act 2004 (c.33).

- (m) “immigration rules” means the rules laid down as mentioned in section 3(2) of the 1971 Act applying on 1st January 2007⁽⁴⁾;
 - (n) “letter of approval under the work permit arrangements” has the meaning given in paragraph 1(b) of Schedule 1;
 - (o) “registration certificate” means a certificate issued in accordance with regulation 16 of the 2006 Regulations;
 - (p) “relevant requirements” means, in relation to an authorised category of employment, the requirements set out in the second column of the table in Schedule 1 for that category;
 - (q) “Sectors Based Scheme” has the meaning given in paragraph 1(f) of Schedule 1;
 - (r) “spouse” does not include a party to a marriage of convenience;
 - (s) “student” has the meaning given in regulation 4(1)(d) of the 2006 Regulations;
 - (t) “worker” means a worker within the meaning of Article 39 of the Treaty establishing the European Community⁽⁵⁾, and “work” and “working” shall be construed accordingly.
- (3) Schedule 2 (consequential amendments) shall have effect.

“Accession State national subject to worker authorisation”

2.—(1) Subject to the following paragraphs of this regulation, in these Regulations “accession State national subject to worker authorisation” means a national of Bulgaria or Romania.

(2) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation if he has 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.

(3) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation if he was legally working in the United Kingdom on 31st December 2006 and had been legally working in the United Kingdom without interruption throughout the period of 12 months ending on that date.

(4) A national of Bulgaria or Romania who legally works in the United Kingdom without interruption for a period of 12 months falling partly or wholly after 31st December 2006 shall cease to be an accession State national subject to worker authorisation at the end of that period of 12 months.

(5) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is also a national of—

- (a) the United Kingdom; or
- (b) an EEA State, other than Bulgaria or Romania.

(6) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is the spouse or civil partner of a national of the United Kingdom or of a person settled in the United Kingdom.

(7) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he has a permanent right of residence under regulation 15 of the 2006 Regulations.

(8) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is a family member of an EEA national who has a right to reside in the United Kingdom under the 2006 Regulations, unless that EEA national is—

- (a) an accession State national subject to worker authorisation; or

(4) Immigration Rules H.C. 395, laid before Parliament on 23 May 1994 (as amended).

(5) OJNo. C325, 24.12.02, p.51.

(b) a student who is not an accession State national subject to worker authorisation solely by virtue of falling within paragraph (10).

(9) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is a highly skilled person and holds a registration certificate that includes a statement that he has unconditional access to the United Kingdom labour market.

(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, does not work for more than 20 hours a week and holds a registration certificate that includes a statement that he is a student who has access to the United Kingdom labour market for 20 hours a week.

(11) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is a posted worker.

(12) For the purposes of paragraphs (3) and (4) of this regulation—

(a) a person working in the United Kingdom during a period falling before 1st January 2007 was working legally in the United Kingdom during that period if—

(i) he had leave to enter or remain in the United Kingdom under the 1971 Act for that period, that leave allowed him to work in the United Kingdom, and he was working in accordance with any condition on that leave restricting his employment; or

(ii) he was entitled to reside in the United Kingdom for that period under the Immigration (European Economic Area) Regulations 2000⁽⁶⁾ or the 2006 Regulations without the requirement for such leave;

(b) a person working in the United Kingdom on or after 1st January 2007 is legally working during any period in which he—

(i) falls within paragraphs (5) to (10); or

(ii) holds an accession worker authorisation document and is working in accordance with the conditions set out in that document;

(c) a person shall be treated as having worked in the United Kingdom without interruption for a period of 12 months if he was legally working in the United Kingdom at the beginning and end of that period and any intervening periods in which he was not legally working in the United Kingdom do not, in total, exceed 30 days.

(13) In this regulation—

(a) “posted worker” means a worker who is posted to the United Kingdom, within the meaning of Article 1(3) of Directive 96/71/EC concerning the posting of workers⁽⁷⁾, by an undertaking established in an EEA State;

(b) the reference to a person settled in the United Kingdom shall be interpreted in accordance with section 33(2A)⁽⁸⁾ of the 1971 Act.

Authorised family member

3.—(1) For the purposes of these Regulations a person shall be treated as an authorised family members if he is the family member of—

(a) an accession State national subject to worker authorisation who has a right to reside in the United Kingdom under regulation 14(1) of the 2006 Regulations, unless that national only has a right to reside under that regulation by virtue of his status as a worker and he is

⁽⁶⁾ S.I. 2000/2326; amended by S.I. 2001/865, S.I. 2003/549, S.I. 2003/3188, S.I.2005/47 and S.I. 2005/671.

⁽⁷⁾ O.J. L 018, 21.1.1997, p.1 (the full title of the Directive is Council Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services).

⁽⁸⁾ Section 33(2A) was inserted by paragraph 7(b) of Schedule 4 to the British Nationality Act 1981 (c. 61).

working as an au pair, a seasonal agricultural worker or under the Sectors Based Scheme;
or

- (b) a student who is not an accession State national subject to worker authorisation solely by virtue of falling within regulation 2(10).

(2) The spouse or civil partner of a person who has leave to enter or remain in the United Kingdom under the 1971 Act that allows him to work in the United Kingdom shall also be treated as an authorised family member.

“Highly skilled person”

4.—(1) In these Regulations “highly skilled person” means a person who—

- (a) meets the criteria specified by the Secretary of State for the purpose of paragraph 135A(i)(9) of the immigration rules (entry to the United Kingdom under the Highly Skilled Migrant Programme) and applying on 1st January 2007, other than the criterion requiring a proficiency in the English language; or
- (b) has been awarded one of the following qualifications and applies for a registration certificate or submits a registration certificate to the Secretary of State under regulation 7(4) within 12 months of being awarded the qualification—
- (i) a Higher National Diploma or degree awarded by a relevant institution in Scotland;
or
- (ii) a degree with second class honours or above in a subject approved by the Department for Education and Skills for the purpose of participation in the Science and Engineering Graduates Scheme(10), or a master’s degree or doctorate in any subject, awarded by a relevant institution in England, Wales or Northern Ireland.

(2) In paragraph (1)(b), “relevant institution” means an institution that is financed from public funds or included on the Department for Education and Skills’ Register of Education and Training Providers(11) on 1st January 2007.

Derogation from provisions of Community law relating to workers

5. Regulations 6, 7 and 9 derogate during the accession period from Article 39 of the Treaty establishing the European Communities, Articles 1 to 6 of Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community(12) and Council Directive 2004/38/EC(13) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

(9) Paragraph 135A(i) was inserted by immigration rules changes on 1st April 2003 (HC 538). The specified criteria are published by Work Permits UK, part of the Home Office, and are available on the Home Office website (www.workingintheuk.gov.uk).

(10) Details of the Science and Engineering Graduates Scheme are available on the Home Office website (www.workingintheuk.gov.uk).

(11) The Register of Education and Training Providers is maintained by, and is available on the website of, the Department for Education and Skills (www.dfes.gov.uk/providersregister).

(12) O.J. L 257, 19.10.1968, p.2.

(13) OJ L 158, 30.4.2004, p.77 (the full title of the Directive is Council Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 75/34/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC).