
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Accession (Immigration and Worker Authorisation) Regulations 2006 and the Accession (Immigration and Worker Registration) Regulations 2004.

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 “labour market derogation”). The restrictions on access to the United Kingdom labour market in the 2006 Accession Regulations were imposed on the basis of that derogation.

The labour market derogation provides 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 “standstill clause”). At that date Bulgarian and Romanian nationals falling within section 8(3) of the Immigration Act 1971 (members of a diplomatic mission, members of their families and persons otherwise entitled to diplomatic immunity) were exempt from immigration control and could work in the United Kingdom without restriction. Given the standstill clause such persons should be exempt from the labour market restrictions imposed by the 2006 Accession Regulations. The amendments to the 2006 Accession Regulations made by regulation 2(2)(a) and (c) of these Regulations exempt such persons from the restrictions on labour market access.

The labour market derogation also allows Member States to restrict access to their labour markets by family members of Bulgarian and Romanian workers. The provision in the 2006 Accession Regulations dealing with this restriction also covers the family members of Bulgarian and Romanian nationals who are self-employed, self-sufficient or students. This goes beyond the scope of the derogation. Regulation 2(2)(b) of these Regulations therefore amends the relevant provision in the 2006 Accession Regulations so that it only applies to the family members of Bulgarian and Romanian workers. Regulation 2(3) makes a consequential amendment to the definition of ‘authorised family member’ in regulation 3 of the 2006 Accession Regulations. Regulation 4 of these Regulations contains a transitional provision to ensure that the amendment to the definition of ‘authorised family member’ does not affect applications by Bulgarian and Romanian nationals for authorisation to work made prior to these Regulations coming into force.

Regulation 4 of the 2006 Accession Regulations defines “highly skilled person”. A Bulgarian and Romanian national who is a highly skilled person is able to work under the 2006 Accession Regulations without authorisation. “Highly skilled person” is partly defined by reference to having a qualification in a subject approved for the purpose of the Science and Engineering Graduates scheme referred to in the Immigration Rules. This scheme has been replaced by a new graduate scheme for the purpose of the Immigration Rules. Under the new scheme qualifications no longer have to be in an approved subject. Regulation 2(4) of these Regulations amends regulation 4 of the 2006 Accession Regulations to take account of the new graduate scheme. This will ensure that Bulgarian and Romanian nationals benefit from the change introduced by the new graduate scheme.

The 2004 Accession Regulations impose similar restrictions on access to the United Kingdom labour market by nationals of the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the Slovak Republic (the “relevant 2004 accession States”) following the accession

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of those States to the European Union on 1st May 2004. These restrictions are imposed pursuant to a labour market derogation in the Accession Treaty for those States (signed at Athens on 16th April 2003).

Regulations 3(a) and (c) of these Regulations amend the 2004 Accession Regulations so that nationals from the relevant 2004 accession States who were exempt from immigration control under section 8(3) of the Immigration Act 1971 are exempt from the restrictions on labour market access set out in the 2004 Accession Regulations. This complies with the standstill clause in the Accession Treaty for the relevant 2004 accession States.

Regulation 3(b) of these Regulations amends the 2004 Accession Regulations so that nationals of the relevant 2004 self-sufficient or students are exempt from the labour market restrictions set out in the 2004 Accession Regulations. The labour market derogations in the Accession Treaties do not provide for restrictions to be imposed on such family members.

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