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STATUTORY INSTRUMENTS

2007 No. 3012

IMMIGRATION

**The Accession (Worker Authorisation and Worker Registration)
(Amendment) Regulations 2007**

<i>Made</i>	- - - -	<i>23rd October 2007</i>
<i>Laid before Parliament</i>		<i>25th October 2007</i>
<i>Coming into force</i>	- -	<i>19th November 2007</i>

The Secretary of State, being a Minister designated (a) for the purpose of section 2(2) of the European Communities Act 1972(b) 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 (Worker Authorisation and Worker Registration) (Amendment) Regulations 2007 and shall come into force on 19th November 2007.

(2) In these Regulations “2006 Accession Regulations” means the Accession (Immigration and Worker Authorisation) Regulations 2006(c).

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) after paragraph (6) insert the following paragraph—

“(6A) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is a member of a mission or other person mentioned in section 8(3) of the 1971 Act (member of a diplomatic mission, the family member of such a person, or a person otherwise entitled to diplomatic immunity), other than a person who, under section 8(3A) of that Act, does not count as a member of a mission for the purposes of section 8(3).”;

(b) for paragraph (8) substitute—

“(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 —

(a) S.I. 2000/1813 and S.I. 2004/706.

(b) 1972 c. 68.

(c) S.I. 2006/3317, amended by S.I. 2007/475.

- (a) an EEA national who has a right to reside in the United Kingdom under the 2006 Regulations, other than —
 - (i) an accession State national subject to worker authorisation; or
 - (ii) a person who is not an accession State national subject to worker authorisation solely by virtue of being the family member of a person mentioned in sub-paragraph (b); or
- (b) an accession State national subject to worker authorisation who has a right to reside under regulation 14(1) of the 2006 Regulations by virtue of being a self-employed person, a self-sufficient person or a student falling within sub-paragraph (c), (d) or (e) of regulation 6(1) of those Regulations (“qualified person”).”;
- (c) in paragraph (12)(a), insert the following paragraph after sub-paragraph (i)—
 - “(ia) he was exempt from the provisions of the 1971 Act by virtue of section 8(3) of that Act; or”.
- (3) In regulation 3 (authorised family member), for paragraph (1) substitute —
 - “(1) A person is an authorised family member for the purposes of these Regulations if he is the family member of 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 as a worker, unless—
 - (a) that worker is only authorised to work under these Regulations by virtue of holding an accession worker card issued in accordance with regulation 11 pursuant to an application as an authorised family member; or
 - (b) that worker is working as an au pair, a seasonal agricultural worker or under the Sectors Based Scheme.”.
- (4) In regulation 4 (“highly skilled person”), for sub-paragraphs (i) and (ii) in paragraph (1)(b) substitute—
 - “(i) a Higher National Diploma awarded by a relevant institution in Scotland; or
 - (ii) a degree, postgraduate certificate or postgraduate diploma awarded by a relevant institution in the United Kingdom.”.

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

- 3.** In regulation 2 of the Accession (Immigration and Worker Registration) Regulations 2004(a) (“Accession State worker requiring registration”) —
- (a) after paragraph (5) insert the following paragraph —
 - “(5A) A national of a relevant accession State is not an accession State worker requiring registration during any period in which he is a member of a mission or other person mentioned in section 8(3) of the 1971 Act (member of a diplomatic mission, the family member of such a person, or a person otherwise entitled to diplomatic immunity), other than a person who, under section 8(3A) of that Act, does not count as a member of a mission for the purposes of section 8(3).”;
 - (b) in paragraph (6)(b), for sub-paragraph (iii) substitute—
 - “(iii) an accession State national subject to worker authorisation who only has a right to reside under regulation 13 of those Regulations or under regulation 14 of those Regulations by virtue of being treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations.”;
 - (c) in paragraph (7)—
 - (i) in sub-paragraph (a), after sub-paragraph (i) insert the following paragraph—

(a) S.I. 2004/1219; the relevant amending instruments are S.I. 2006/3317 and S.I. 2007/475.

- “(ia) he was exempt from the provisions of the 1971 Act by virtue of section 8(3) of that Act; or”;
- (ii) in sub-paragraph (c), for “paragraph (5) or (6)” substitute “paragraph (5), (5A) or (6)”.

Transitional provision

4. Regulation 3(1) of the 2006 Accession Regulations (authorised family member), as in force immediately before the date on which these Regulations come into force, shall continue to apply for the purpose of determining an application made in accordance with regulation 10 of the 2006 Accession Regulations (application for an accession worker card) before that date by a person who was an authorised family member under regulation 3(1), as then in force, when the application was made.

Home Office
23rd October 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 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 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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