2006 No. 3317

IMMIGRATION

The Accession (Immigration and Worker Authorisation) Regulations 2006

Made - - - - *13th December 2006*

Coming into force - *1st January 2007*

The Secretary of State, being a Minister designated(**a**) for the purposes 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, and in exercise of the powers conferred upon him by section 2 of the European Union (Accessions) Act 2006(**c**), makes the following Regulations, a draft of which has been approved by resolution of each House of Parliament:

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(**d**);

(b) "the 2006 Regulations" means the Immigration (European Economic Area) Regulations 2006(**e**);

(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(**f**);

(i) "EEA State" means–

(i) a member State, other than the United Kingdom;

(ii) Norway, Iceland or Liechtenstein;

(**a**) S.I. 2000/1813 and S.I. 2004/706.
(**b**) 1972 c. 68.
(**c**) 2006 c. 2.
(**d**) 1971 c. 77.
(**e**) S.I. 2006/1003.
(**f**) "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).

(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;

(m) "immigration rules" means the rules laid down as mentioned in section 3(2) of the 1971 Act applying on 1st January 2007(**a**);

(n) "letter of approval under the work permit arrangements" has the meaning given in paragraph 1(b) of Schedule 1;

Para. 1 "registration certificate" is reproduced here for the purposes of the transitional provisions detailsed in reg. 4(1) of S.I. 2007/475.

(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;

Para. 1 "student" is reproduced here for the purposes of the transitional provisions detailsed in reg. 4(1) of S.I. 2007/475.

(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(**b**), 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.

[1]Para. 2 substituted by reg. 2(2)(a) of S.I. 2007/475 as from 16.3.07.

►[1](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.◄

(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.

(**a**) Immigration Rules H.C. 395, laid before Parliament on 23 May 1994 (as amended).
(**b**) OJ No. C325, 24.12.02, p. 51.

►[1](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).◄

[1]Para. (6A) inserted & in reg. 2(8) substituted by reg. 2 of S.I. 2007/3012 as from 19.11.07.

(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.

►[1](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) 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").◄

(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.

►[2](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.

[2]Para. (10), (10A) & (10B) substituted for (10) by reg. 2(2)(b) of S.I. 2007/475 as from 16.3.07.

(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.◄

(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

[1]Reg. 12(a)(ia) inserted & reg. 3(1) substituted by regs. 2(2)(c) & (3) of S.I. 2007/3012 as from 19.11.07.

[2]Words in para. (12)(b)(i) substituted by reg. 2(2)(d) of S.I. 2007/475 as from 16.3.07.

►[1](ia) he was exempt from the provisions of the 1971 Act by virtue of section 8(3) of that Act; or◄

(ii) he was entitled to reside in the United Kingdom for that period under the Immigration (European Economic Area) Regulations 2000(**a**) 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 ►[2](10B)◄; 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(**b**), 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)(**c**) of the 1971 Act.

Authorised family member

3.—►[1](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.◄

(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)(**d**) 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–

(**a**) 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.

(**b**) OJL 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).

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

(**d**) 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).

►[1](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.◄

[1]Words substituted in reg. (4)(b) by regs. 2(4) by S.I. 2007/3012 as from 19.11.07.

(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(**a**) 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(**b**) and Council Directive 2004/38/EC(**c**) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

PART 2

Immigration

Right of residence of an accession State national subject to worker authorisation

6.—(1) An accession State national subject to worker authorisation shall, during the accession period, only be entitled to reside in the United Kingdom in accordance with the 2006 Regulations, as modified by this regulation.

(2) An accession State national subject to worker authorisation who is seeking employment in the United Kingdom shall not be treated as a jobseeker for the purpose of the definition of "qualified person" in regulation 6(1) of the 2006 Regulations and such a person shall be treated as a worker for the purpose of that definition only during a period in which he holds an accession worker authorisation document and is working in accordance with the conditions set out in that document.

(3) Regulation 6(2) of the 2006 Regulations shall not apply to an accession State national subject to worker authorisation who ceases to work.

Issuing registration certificates and residence cards to nationals of Bulgaria and Romania and their family members during the accession period

7.—(1) Subject to paragraph (2), an accession State national subject to worker authorisation shall not be treated as a qualified person for the purposes of regulations 16 and 17 of the 2006 Regulations (issue of registration certificates and residence cards) during the accession period unless he falls within sub-paragraphs (c), (d) or (e) of regulation 6(1) of the 2006 Regulations.

(2) The Secretary of State shall issue a registration certificate to an accession State national subject to worker authorisation on application if he is satisfied that the applicant–

(a) is seeking employment in the United Kingdom; and

(b) is a highly skilled person.

(**a**) 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).

(**b**) OJ L 257, 19.10.1968, p. 2.

(**c**) 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).

[1]Words inserted in reg. 7(3) & substituted in reg. 7(5)(b) and (6) by reg. 2(4)(a)-(c) of S.I. 2007/475 as from 16.3.07.

(3) Where the Secretary of State issues a registration certificate during the accession period to a Bulgarian or Romanian national under paragraph (2) or in any case where he is satisfied that the Bulgarian or Romanian national is not an accession State national subject to worker authorisation ►[1](other than solely by virtue of falling within paragraph (10) or (10B) of regulation 2)◄, the registration certificate shall include a statement that the holder of the certificate has unconditional access to the United Kingdom labour market.

(4) A Bulgarian or Romanian national who holds a registration certificate that does not include a statement that he has unconditional access to the United Kingdom labour market may, during the accession period, submit the certificate to the Secretary of State for the inclusion of such a statement.

(5) The Secretary of State shall re-issue a certificate submitted to him under paragraph (4) with the inclusion of a statement that the holder has unconditional access to the United Kingdom labour market if he is satisfied that the holder–

(a) is a highly skilled person; or

(b) has ceased to be an accession State national subject to worker authorisation other than solely by virtue of falling within ►[1]paragraph (10) or (10B) of regulation 2◄ .

(6) A registration certificate issued to a Bulgarian or Romanian student during the accession period shall include a statement that the holder of the certificate is a student who has ►[1]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)◄ unless it includes a statement under paragraph (3) or (5) that the holder has unconditional access to the United Kingdom labour market.

(7) But this regulation is subject to regulation 20 of the 2006 Regulations (power to refuse to issue and to revoke registration certificates).

Transitional provisions to take account of the application of the 2006 Regulations to nationals of Bulgaria and Romania and their family members on 1st January 2007

8.—(1) Where before 1st January 2007 directions have been given for the removal of a Bulgarian or Romanian national or the family member of such a national under paragraphs 8 to 10A of Schedule 2 to the 1971 Act(**a**) or section 10 of the 1999 Act, those directions shall cease to have effect on and after that date.

(2) Where before 1st January 2007 the Secretary of State has made a decision to make a deportation order against a Bulgarian or Romanian national or the family member of such a national under section 5(1) of the 1971 Act–

(a) that decision shall, on and after 1st January 2007, be treated as if it were a decision under regulation 19(3)(b) of the 2006 Regulations; and

(b) any appeal against that decision, or against the refusal of the Secretary of State to revoke the deportation order, made under section 63 of the 1999 Act or section 82(2)(j) or (k) of the 2002 Act before 1st January 2007, shall, on or after that date, be treated as if it had been made under regulation 26 of the 2006 Regulations.

(3) In this regulation–

(a) "the 1999 Act" means the Immigration and Asylum Act 1999(**b**);

(b) "the 2002 Act" means the Nationality, Immigration and Asylum Act 2002(**c**);

(**a**) Paragraphs 8 to 10 have been amended by the Schedule to the Immigration Act 1988 (c. 14), Schedule 2 to the Asylum and Immigration Act 1996 (c. 49) and Schedule 7 to the Nationality, Immigration and Asylum Act 2002 (c. 41), and paragraph 10A was inserted by section 73 of the 2002 Act.

(**b**) 1999 c. 33; section 63 of the 1999 Act was repealed by Schedule 9 to the Nationality, Immigration and Asylum Act 2002 but continues to have effect in relation to appeals made before 1st April 2003.

(**c**) 2002 c. 41.

(c) any reference to the family member of a Bulgarian or Romanian national is a reference to a person who on 1st January 2007 acquires a right to reside in the United Kingdom under the 2006 Regulations as the family member of a Bulgarian or Romanian national.

PART 3

Accession State worker authorisation

Requirement for an accession State national subject to worker authorisation to be authorised to work

9.—(1) An accession State national subject to worker authorisation shall only be authorised to work in the United Kingdom during the accession period if he holds an accession worker authorisation document and is working in accordance with the conditions set out in that document.

(2) For the purpose of these Regulations, an accession worker authorisation document is–

(a) a passport or other travel document endorsed before 1st January 2007 to show that the holder has leave to enter or remain in the United Kingdom under the 1971 Act, subject to a condition restricting his employment in the United Kingdom to a particular employer or category of employment;

(b) a seasonal agricultural work card, except where the holder of the card has a document mentioned in sub-paragraph (a) giving him leave to enter the United Kingdom as a seasonal agricultural worker; or

(c) an accession worker card issued in accordance with regulation 11.

(3) But a document shall cease to be treated as an accession worker authorisation document under paragraph (2)–

(a) in the case of a document mentioned in paragraph (2)(a), at the end of the period for which leave to enter or remain is given;

(b) in the case of a seasonal agricultural work card, at the end of the period of six months beginning with the date on which the holder of the card begins working for the agricultural employer specified in the card;

(c) in the case of an accession worker card, on the expiry of the card under regulation 11(7).

(4) For the purpose of this regulation–

(a) "seasonal agricultural work card" means a Home Office work card issued by the operator of a seasonal agricultural workers scheme approved by the Secretary of State for the purpose of paragraph 104(ii) of the immigration rules;

(b) the reference to a travel document other than a passport is a reference to a document which relates to a national of Bulgaria or Romania and which is designed to serve the same purpose as a passport.

Application for an accession worker card

10.—(1) An application for an accession worker card may be made by an accession State national subject to worker authorisation who wishes to work for an employer in the United Kingdom if–

(a) the employment concerned falls within an authorised category of employment; or

(b) the applicant is an authorised family member.

(2) The application shall be in writing and shall be made to the Secretary of State.

(3) The application shall state–

(a) the name, address, and date of birth of the applicant;

(b) the name and address of the employer for whom the applicant wishes to work; and

(c) unless the applicant is an authorised family member, the authorised category of employment covered by the application.

(4) The application shall be accompanied by–

(a) the applicant's national identity card or passport; and

(b) two passport size photographs of the applicant.

(5) Where the applicant is not an authorised family member, the application shall, in addition to the documents required by paragraph (4), be accompanied by–

(a) where the relevant requirements for the authorised category of employment specified in the application require the applicant to hold a letter of approval under the work permit arrangements, that letter;

(b) where sub-paragraph (a) does not apply, a letter from the employer specified in the application confirming that the applicant has an offer of employment with the employer; and

(c) any other proof that the applicant wishes to provide to establish that he meets the relevant requirements.

(6) Where the applicant is an authorised family member, the application shall, in addition to the documents required by paragraph (4), be accompanied by–

(a) a letter from the employer specified in the application confirming that the applicant has an offer of employment with the employer; and

(b) proof that the applicant is an authorised family member.

(7) In this regulation "address" means, in relation to an employer which is a body corporate or partnership, the head or main office of that employer.

Issuing an accession worker card etc

11.—(1) Subject to paragraph (2), the Secretary of State shall issue an accession worker card pursuant to an application made in accordance with regulation 10 if he is satisfied that the applicant is an accession State national subject to worker authorisation who–

(a) is an authorised family member; or

(b) meets the relevant requirements for the authorised category of employment covered by the application.

(2) The Secretary of State shall not issue an accession worker card if he has decided to remove the applicant from the United Kingdom under regulation 19(3)(b) of the 2006 Regulations (removal on grounds of public policy, public security or public health).

(3) An accession worker card issued under this regulation to an authorised family member shall include a condition restricting the applicant's employment to the employer specified in the application.

(4) An accession worker card issued under this regulation pursuant to an application that was accompanied by a letter of approval under the work permit arrangements shall include the following conditions–

(a) a condition restricting the applicant's employment to the employer specified in the application and any secondary employer; and

(b) a condition restricting him to the type of employment specified in the letter of approval under the work permit arrangements.

(5) In any other case, an accession worker card issued under this regulation shall include the following conditions–

(a) a condition restricting the applicant's employment to the employer specified in the application; and

(b) a condition restricting him to the authorised category of employment specified in the application.

(6) An accession worker card issued under this regulation shall include a photograph of the applicant and shall set out–

(a) the name, nationality and date of birth of the applicant;

(b) the name and address of the employer specified in the application;

(c) the conditions required by paragraph (3), (4) or (5), as the case may be; and

(d) the date on which the card was issued.

(7) An accession worker card shall expire if the holder of the card ceases working for the employer specified in the application.

(8) Where the Secretary of State is not satisfied as mentioned in paragraph (1) or where paragraph (2) applies, he shall refuse the application and issue a notice of refusal setting out the reasons for the refusal.

(9) An accession worker card or notice of refusal issued under this regulation shall be sent to the applicant by post together with the identity card or passport that accompanied the application.

(10) In this regulation, "secondary employer" means, in relation to an applicant, an employer who is not specified in his application and who employs the applicant for no more than 20 hours a week when the applicant is not working for the employer who is specified in the application.

Unauthorised employment of accession State national – employer offence

12.—(1) Subject to paragraphs (2) and (3), an employer who employs an accession State national subject to worker authorisation during the accession period shall be guilty of an offence if–

(a) the employee does not hold an accession worker authorisation document; or

(b) the employee's accession worker authorisation document is subject to conditions that preclude him from taking up the employment.

(2) Subject to paragraph (4), in proceedings under this regulation it shall be a defence to prove that before the employment began there was produced to the employer a document that appeared to him to be a registration certificate issued to the worker and–

(a) the registration certificate contained a statement that the worker has unconditional access to the United Kingdom labour market; or

▶[1](b) the registration certificate contained a statement that the worker is a student who has 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 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◀.

[1]Reg. 12(2)(b) substituted by reg. 2(5) of S.I. 2007/475 as from 16.3.07.

(3) Subject to paragraph (4), in proceedings under this regulation it shall be a defence to prove that before the employment began there was produced to the employer a document that appeared to him to be an accession worker authorisation document that authorised the worker to take up the employment.

(4) The defence afforded by paragraph (2) and (3) shall not be available in any case where the employer–

(a) did not take and retain a copy of the relevant document; or

(b) knew that his employment of the worker constituted an offence under this regulation.

(5) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where an offence under this regulation committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of–

(a) any director, manager, secretary or other similar officer of the body corporate; or

(b) any person purporting to act in such a capacity,

he, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(8) Where an offence under this regulation is committed by a partnership (other than a limited partnership) each partner shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(9) Paragraph (6) shall have effect in relation to a limited partnership as if–

(a) a reference to a body corporate were a reference to a limited partnership; and

(b) a reference to an officer of the body corporate were a reference to a partner.

(10) An offence under this regulation shall be treated as–

(a) a relevant offence for the purpose of sections 28B and 28D of the 1971 Act(**a**) (search, entry and arrest);

(b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H(**b**) of that Act (search after arrest); and

(c) an offence referred to in section 28AA(**c**) of that Act (arrest with warrant).

Unauthorised working by accession State national – employee offence

13.—(1) Subject to paragraph (2), an accession State national subject to worker authorisation who works in the United Kingdom during the accession period shall be guilty of an offence if–

(a) he does not hold an accession worker authorisation document; or

(b) he is working in breach of the conditions set out in his accession worker authorisation document.

(2) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for not more than three months, or both.

(3) A constable or immigration officer who has reason to believe that a person has committed an offence under this regulation may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a penalty in accordance with the notice.

(4) The penalty payable in pursuance of a notice under paragraph (3) is £1000 and shall be payable to the Secretary of State.

(**a**) Section 28B was inserted by section 129 of the Immigration and Asylum Act 1999 (c. 33) and section 28D was inserted by section 131 of that Act; both sections have been amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

(**b**) Sections 28E, 28G and 28 H were inserted by sections 132, 134 and 135 of the Immigration and Asylum Act 1999(c. 33) respectively.

(**c**) Section 28AA was inserted by section 152 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

(5) Where a person is given a notice under paragraph (3) in respect of an offence–

(a) no proceedings may be instituted for that offence before the expiration of the period of twenty one days following the date of the notice; and

(b) he may not be convicted of that offence if before the expiration of that period he pays the penalty in accordance with the notice.

(6) A notice under paragraph (3) must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(7) A notice under paragraph (3) must also state–

(a) the period during which, by virtue of paragraph (5), proceedings will not be instituted for the offence;

(b) the amount of the penalty; and

(c) that the penalty is payable to the Secretary of State at the address specified in the notice.

(8) Without prejudice to payment by any other method, payment of a penalty in pursuance of a notice under paragraph (3) may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the Secretary of State at the address specified in the notice.

(9) Where a letter is sent in accordance with paragraph (8) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

Deception – employee offence

14.—(1) A person is guilty of an offence if, by means which include deception by him, he obtains or seeks to obtain an accession worker card.

(2) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for not more than three months, or both.

Offences under regulations 13 and 14 – search, entry and arrest

15. An offence under regulation 13 or 14 shall be treated as–

(a) a relevant offence for the purpose of sections 28B and 28D of the 1971 Act (search, entry and arrest);

(b) an offence under Part III of that Act (criminal proceedings) for the purpose of sections 28E, 28G and 28H of that Act (search after arrest); and

(c) an offence under section 24(1)(b) of that Act for the purpose of sections 28A, 28CA and 28FA(**a**) of that Act (arrest without warrant, entry of business premises to arrest and search for personal records).

Liam Byrne
Minister of State
Home Office

13th December 2006

(**a**) Section 28A was inserted by section 128 of the Immigration and Asylum Act 1999 (c. 33) and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002 (c. 41); sections 28CA and 28FA were inserted by sections 153 and 154 of the Nationality, Immigration and Asylum Act 2002 respectively.

SCHEDULE 1

Regulation 1(2)

Authorised categories of employment and relevant requirements

Authorised category of employment	*Relevant requirements in relation to authorised category of employment*
Authorised categories of employment requiring a letter of approval under the work permit arrangements	
Employment under the Sectors Based Scheme	The applicant– (1) holds a letter of approval under the work permit arrangements issued under the Sectors-Based Scheme; and (2) is capable of undertaking the employment specified in that letter.
Training or work experience	The applicant– (1) holds a letter of approval under the work permit arrangements issued under the Training and Work Experience Scheme; and (2) is capable of undertaking the training or work experience as specified in that letter.
Work permit employment	The applicant– (1) holds a letter of approval under the work permit arrangements issued in relation to work permit employment; and (2) is capable of undertaking the employment specified in that letter.
Other authorised categories of employment	
Airport based operational ground staff of an overseas air line	The applicant has been transferred to the United Kingdom by an overseas-owned airline operating services to and from the United Kingdom to take up duty at an international airport as station manager, security manager or technical manager.
Au pair placement	The applicant– (1) has and intends to take up an offer of an au pair placement; (2) is aged between 17 to 27 inclusive; (3) is unmarried and is not in a civil partnership; and (4) is without dependants.

Authorised category of employment	*Relevant requirements in relation to authorised category of employment*
Domestic worker in a private household	The applicant– (1) is over 18; (2) has been employed for at least a year outside the United Kingdom as a domestic worker under the same roof as his employer or in a household that the employer uses for himself on a regular basis; and (3) intends to be so employed by that employer in the United Kingdom.
Minister of religion, missionary or member of a religious order	The applicant– (1) if a minister of religion– (a) has either been working for at least one year as a minister of religion in any of the five years immediately prior to the date on which the application for the worker accession card is made or, where ordination is prescribed by a religious faith as the sole means of entering the ministry, has been ordained as a minister of religion following at least one year's full time or two years' part time training for the ministry; and (b) holds an International English Language Testing System Certificate issued to him to certify that he has achieved level 4 competence in spoken English, and the Certificate is dated not more than two years prior to the date on which the application for an accession worker card is made; (2) if a missionary, has been trained as a missionary or has worked as a missionary and is being sent or has been sent to the United Kingdom by an overseas organisation; (3) if a member of a religious order, is living or coming to live in a community maintained by the religious order of which he is a member and, if intending to teach, does not intend to do so save at an establishment maintained by his order; and (4) intends to work in the United Kingdom as a minister of religion, missionary or for the religious order of which he is a member.
Overseas government employment	The applicant intends to work in the United Kingdom for an overseas government or the United Nations or other international organisation of which the United Kingdom is a member.

Authorised category of employment	*Relevant requirements in relation to authorised category of employment*
Postgraduate doctors, dentists and trainee general practitioners	The applicant– (1) is a graduate from a medical or dental school who is eligible for provisional or limited registration with the General Medical Council or General Dental Council and intends to work in the United Kingdom as a doctor or dentist as part of his training; or (2) is a doctor, dentist or trainee general practitioner eligible for full or limited registration with the General Medical Council or the General Dental Council and intends to work in the United Kingdom as part of his postgraduate training or general practitioner training in a hospital or the Community Health Services.
Private servant in a diplomatic household	The applicant– (1) is over 18; and (2) intends to work in the United Kingdom as a private servant in the household of a member of staff of a diplomatic or consular mission who enjoys diplomatic privileges and immunity within the meaning of the Vienna Convention on Diplomatic Relations(**a**).
Representative of an overseas newspaper, news agency or broadcasting organisation	The applicant has been engaged by an overseas newspaper, news agency or broadcasting organisation outside the United Kingdom and is being posted to the United Kingdom by that newspaper, agency or organisation to act as its representative.
Sole representative	The applicant– (1) has been employed outside the United Kingdom as a representative of a firm that has its headquarters and principal place of business outside the United Kingdom and has no branch, subsidiary or other representative in the United Kingdom; (2) intends to work as a senior employee with full authority to take operational decisions on behalf of the overseas firm for the purpose of representing it in the United Kingdom by establishing and

(**a**) Cmnd. 2565.

Authorised category of employment	*Relevant requirements in relation to authorised category of employment*
	operating a registered branch or wholly owned subsidiary of that overseas firm; and (3) is not a majority shareholder in that overseas firm.
Teacher or language assistant	The applicant intends to work at an educational establishment in the United Kingdom under an exchange scheme approved by the Department for Education and Skills, the Scottish or Welsh Office of Education or the Department of Education, Northern Ireland, or administered by the British Council's Education and Training Group.
Overseas qualified nurses	The applicant– (1) has obtained confirmation from the Nursing and Midwifery Council that he is eligible for admission to the Overseas Nurses Programme; and (2) has been offered and intends to take up a supervised practice placement through an education provider that is recognised by the Nursing and Midwifery Council or a midwifery adaptation programme placement in a setting approved by that Council.

1. In this Schedule–

(a) "au pair placement" means an arrangement whereby a young person–

(i) comes to the United Kingdom for the purpose of learning English;

(ii) lives for a time as a member of an English speaking family with appropriate opportunities for study; and

(iii) helps in the home for a maximum of 5 hours per day in return for an allowance and with two free days per week;

(b) "letter of approval under the work permit arrangements" means a letter issued by the Secretary of State under the work permit arrangements stating that employment by the employer specified in the letter of the person so specified for the type of employment so specified satisfies the labour market criteria set out in those arrangements;

(c) "member of a religious order" means a person who lives in a community run by that order;

(d) "minister of religion" means a religious functionary whose main regular duties comprise the leading of a congregation in performing the rites and rituals of the faith and in preaching the essentials of the creed;

(e) "missionary" means a person who is directly engaged in spreading a religious doctrine and whose work is not in essence administrative or clerical;

(f) "Sectors Based Scheme" means the scheme established by the Secretary of State for the purpose of paragraph 135I(i)(**a**) of the immigration rules (requirements for leave to enter the United Kingdom for the purpose of employment under the Sectors Based Scheme);

(g) "Training and Work Experience Scheme" means the scheme established by the Secretary of State for the purpose of paragraph 116(i) of the immigration rules (requirement for leave to enter the United Kingdom for approved training or work experience);

(h) "work permit arrangements" means the arrangements published by the Secretary of State(**b**) setting out the labour market criteria to be applied for the purpose of issuing the work permits referred to in paragraphs 116(i) (Training and Work Experience Scheme) and 128(i) of the immigration rules and the immigration employment document referred to in paragraph 135I(i) (Sectors Based Scheme) of the immigration rules;

(i) "work permit employment" means a category of employment covered by the work permit arrangements, other than employment covered by the Sectors Based Scheme and the Training and Work Experience Scheme.

[Schedule 2 amends regulation 2 of S.I. 2004/1219.]

(**a**) Paragraph 135I was inserted by immigration rules changes on 30th May 2003 (Cm 5829).

(**b**) These arrangements are published by Work Permits UK, part of the Home Office, and are available on the Home Office website (www.workingintheuk.gov.uk).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These 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.

Part 1 of the Regulations (regulations 1 to 5) contains general provisions applicable to the Regulations. The Regulations will come into force on 1st January 2007 (*regulation 1(1)*).

Regulations 1(2), 2, 3 and 4 contain definitions of expressions used in the Regulations. In particular *regulation 2* defines "accession State national subject to worker authorisation". Bulgarian and Romanian nationals who are accession State nationals subject to worker authorisation will require authorisation during the accession period (1st January 2007 to 31st December 2011) in order to be able to work in the United Kingdom (the authorisation requirements are set out in Part 3 of the Regulations).

Regulation 1(3) and *Schedule 2* provide for the consequential amendments that are required to take account of the accession arrangements.

Regulation 5 states that regulations 6, 7 and 9 of the Regulations derogate from the free movement of worker provisions of European Community law. 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 nationals of Bulgaria and Romania and make consequential adjustments to their ancillary rights of residence. This derogation can be applied for a transitional period of five years (that is from 1st January 2007 to 31st December 2011), with provision for a member State to continue to maintain restrictions for a further two years in the case of disturbances to its labour market.

Part 2 of these Regulations (regulations 6 to 8) deals with the immigration aspects of Bulgarian and Romanian accession.

Regulation 6 provides that Bulgarian and Romanian workers who are subject to the worker authorisation scheme set out in Part 3 of the Regulations will, during the transitional period, only have a right to reside in the United Kingdom by virtue of their worker status whilst they are working in accordance with that scheme. Work seekers from these States and workers who cease working will not have a right to reside by virtue of their work seeker or ex-worker status.

Regulation 7 deals with the issuing of European Community residence documents to Bulgarian and Romanian nationals and their family members during the transitional period.

Regulation 8 makes transitional provision to take account of the fact that on 1st January 2007 Bulgarian and Romanian nationals and their family members will generally fall to be treated under the immigration regime applying to European Union nationals rather than under the third country national immigration regime set out in the Immigration Act 1971.

Part 3 (regulations 9 to 15) sets out the accession State worker authorisation scheme, which will apply during the transitional period to Bulgarian and Romanian nationals who require authorisation to work in the United Kingdom.

Regulation 9 provides that an accession State national subject to worker authorisation is only authorised to work in the United Kingdom if he or she holds an accession worker authorisation document and is working in accordance with the conditions set out in the document. Leave granted under the Immigration Act 1971 before accession will count as such a document, as will a seasonal agricultural worker card issued to agricultural workers coming to the United Kingdom to carry out short term agricultural work. In other cases an accession worker card issued under regulation 11 will be required.

Regulations 10 and 11 sets out procedure for the issuing of accession worker cards. Such cards will only be issued in relation to the authorised categories of employment set out in *Schedule 1* to the Regulations or to an authorised family member. The authorised categories of employment cover the categories of employment in relation to which leave to enter or remain is issued under the Immigration Act 1971. Thus where authorisation is required it will generally be subject to the same conditions and restrictions as applied before accession. An authorised family member is a person who will be authorised to work on the basis that a member of his or her family has already been authorised to work in the United Kingdom or has a right to reside as a self-employed or self-sufficient person or as a student. Again this is similar to the pre-accession practice under the Immigration Act 1971.

Regulation 12 makes it an offence for an employer to employ an accession State national subject to worker authorisation in breach of the worker authorisation scheme. *Regulation 13* makes it an offence for such a worker to work in breach of the scheme. Regulation 13 provides for the issuing of penalty notices offering the opportunity for a person to discharge his or her liability to conviction by paying a penalty. *Regulation 14* makes it an offence for a person to obtain an accession worker card by deception. *Regulation 15* sets out the search, entry and arrest powers that are to apply in relation to offences under regulations 13 and 14.