

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (BULGARIA AND ROMANIA) AMENDMENT
REGULATIONS 2006**

2006 No. 3341

1. This explanatory memorandum has been prepared by the Department for Work and Pensions 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 The Regulations on 1st January 2007 insert a category to the list of persons who are exempted from having to satisfy the habitual residence test in the income-related benefits regulations. The additional category exempts persons from Bulgaria and Romania who are subject to the worker authorisation scheme established by the Accession (Immigration and Worker Authorisation) Regulations 2006 (“the Accession Regulations”) and who are treated as workers pursuant to those Regulations.

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

- 3.1 These Regulations will come into force less than 21 days after being laid, in breach of the 21-day rule. The Department considers that it is necessary to breach the rule in order to bring the Regulations into force in time for the accession of Bulgaria and Romania to the European Union (“EU”) on 1st January 2007.
- 3.2 These Regulations are dependent for their full meaning on the Accession Regulations, and therefore could not be made until the Accession Regulations had been made. The Accession Regulations are subject to the affirmative resolution procedure. They were laid in draft by the Home Office on 21st November 2006, and made on 13th December 2006.
- 3.3 As a consequence of waiting until the Accession Regulations were made, the Department was unable to lay its Regulations 21 days before 1st January 2007. However, if the Department had brought the Regulations into force later in order to comply with the 21-day rule, there would be a risk of EU law being breached.
- 3.4 The Department accepts that it would have been preferable for those Regulations to be made more than 21 days before coming into force. However, the date of making the Accession Regulations was outside the Department’s control. The Department apologises that it was necessary to breach the 21-day rule.

4. Legislative Background

- 4.1 The habitual residence test was introduced into the income-related benefits regulations by the Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1994. There have been a number of modifications to the test over time.
- 4.2 These Regulations amend the provisions in the income-related benefits regulations concerning the habitual residence test to take account of the accession of Bulgaria and Romania to the EU. The Accession Treaty for Bulgaria and Romania (signed at Luxembourg on 25th April 2005) provided for the accession of Bulgaria and Romania on 1st January 2007. Under the terms of the Accession Treaty, other EU member States can regulate access to their labour market by nationals of Bulgaria and Romania during a transitional period. It is intended that this will be done (amongst other things) by provisions in the Accession Regulations.
- 4.3 On 1st January 2007, nationals of Bulgaria and Romania will, along with nationals of other member States, be EEA nationals. EEA nationals who are “workers” for the purposes of EU law are exempt from the habitual residence test. Nationals of Bulgaria and Romania, who are subject to worker authorisation pursuant to the Accession Regulations, will only be treated as workers when working in accordance with the Accession Regulations. Accordingly, special provision is needed to exempt such workers from the habitual residence test.

5. Territorial Extent and Application

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 A claimant is required to satisfy the habitual residence test to be eligible for Income Support, income-based Jobseeker’s Allowance, State Pension Credit, Housing Benefit and Council Tax Benefit (“income-related benefits”). It was introduced to prevent “benefit tourism” by people who come here from abroad and immediately claim benefits. Its purpose is to ensure that income-related benefits are paid to people with reasonably close ties to the UK and an intention to settle here. From 1st May 2004, to satisfy the habitual residence test, a claimant must also have a relevant right to reside.

- 7.2 There are a number of categories of person who are exempted from the test and who thus become able to access benefit immediately if they meet the other conditions of entitlement:
- workers, self-employed persons, persons who retain such statuses and their family members for the purposes of Council Directive No. 2004/38/EC;
 - people with a right to reside permanently in the UK by virtue of Article 17 of that Directive;
 - nationals from one of eight of the member States that acceded to the European Union on 1st May 2004 who are workers by virtue of the Home Office Worker Registration Scheme;
 - those who have been granted refugee status, exceptional leave to enter or remain in the UK or humanitarian protection;
 - those who have been deported, expelled or otherwise compulsorily removed from another country to the UK;
 - people who have left Montserrat since November 1995 because of the volcanic eruption there; and
 - persons in Great Britain who left Lebanon on or after 12th July 2006 because of the armed conflict there (this exemption will cease on 31st January 2007).
- 7.3 This instrument adds a further category of persons to the list of exemptions so that nationals of Bulgaria and Romania who are subject to the worker authorisation by virtue of the Accession Regulations and who are treated as workers pursuant to those Regulations will not be prevented from accessing income-related benefits because they are not yet habitually resident.
- 7.4 Failure to legislate would result in workers from Bulgaria and Romania being treated differently to other workers who are EEA nationals. Regulations are thus necessary to maintain the Department's policy that EEA nationals working lawfully in the UK should have access to income-related benefits, in accordance with their rights under EU law.
- 7.5 Guidance will be issued to decision makers to ensure that they are aware of this exception and how to apply it.
- 7.6 The Social Security Advisory Committee agreed that these Regulations should not be referred to it for formal consultation. The local authority associations have also been consulted in relation to Housing Benefit and Council Tax Benefit. They have confirmed that they are content with the instrument as it relates to those benefits.

Consolidation

- 7.7 Informal consolidation of the instrument will be included in due course in the Department's "the Law Relating to Social Security" (the Blue Volumes) which are available on the internet at http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf at no cost to the public.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 There is no impact on the public sector, as there are no costs associated with the changes.

9. Contact

Alison Evans at the Department for Work and Pensions can answer any queries regarding the instrument Tel: 0207-712-2303 or e-mail: Alison.evans@dwp.gsi.gov.uk.