

**EXPLANATORY MEMORANDUM TO**  
**THE ACCESSION (IMMIGRATION AND WORKER AUTHORISATION)**  
**(AMENDMENT) REGULATIONS 2011**

**2011 No. 2816**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

2.1 The Accession (Immigration and Worker Authorisation) Regulations 2006 (“the 2006 Regulations”) set up the workers authorisation scheme regulating access to the United Kingdom labour market by nationals from the Republic of Bulgaria and Romania – the two States that acceded to the European Union on 1<sup>st</sup> June 2007. The 2006 Regulations apply during a transitional period that currently ends on 31<sup>st</sup> December 2011. These amending Regulations extend that transitional period for a further two years so that the transitional measures will continue to apply until the end of December 2013.

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

3.1 The Secretary of State has utilised the power available in section 2(7)(b) of the European Union (Accessions) Act 2006 which enables the Regulations to come into force without the prior approval by resolution of each House. In accordance with section 2(8)(b) of that Act, if the Regulations are not approved by a resolution of each House before the end of the 40 days beginning with the day on which they were made, then they will cease to have effect at the end of that period. This power has been utilised because the transitional period must be extended before the current end date of 31<sup>st</sup> December 2011 and because the Migration Advisory Committee (MAC) report was not published until 4<sup>th</sup> November 2011. This meant that there was not sufficient time in Parliament for the ordinary affirmative procedure.

**4. Legislative Context**

4.1 The Accession Treaty signed at Luxembourg on 25<sup>th</sup> April 2005 provides for the existing Member States to regulate access to their labour market by nationals from the Republic of Bulgaria and Romania. Under the Treaty an existing Member State can maintain such regulation for five years from the date of accession (that is, until 31<sup>st</sup> December 2011) and then for a

further two year period in the case of a serious disturbance to its labour market or the threat of such a disturbance. The Government has decided, following an assessment of the United Kingdom labour market, to extend its system of regulation for a further two years. This requires amending the definition of “accession period” in the 2006 Regulations so that the period expires on 31<sup>st</sup> December 2013 rather than 31<sup>st</sup> December 2011.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 The Minister of State for Immigration (Rt Hon Damian Green MP) has made the following statement regarding Human Rights:

In my view the provisions of the Accession (Immigration and Worker Authorisation) (Amendment) Regulations 2011 are compatible with the Convention rights.

## **7. Policy background**

- *What is being done and why*

7.1 The transitional measures were introduced in the UK to monitor Bulgarian and Romanian nationals’ access to the UK labour market. This scheme makes employment subject to the worker obtaining an accession worker authorisation document prior to commencing employment and the granting of such authorisation will normally be subject to a skills test and a resident labour market test. Workers cease to be subject to this requirement after 12 months continuous employment in the UK.

7.2 The 2006 Regulations provided for the transitional measures to continue until the end of December 2011 on the basis that any further continuation of the transitional measures beyond that point would need to be subject to an assessment of the labour market circumstances at that point in time. That labour market assessment has recently been undertaken by the MAC and, in the light of the MAC’s advice, it is has been decided that the transitional measures should continue until the end of December 2013.

7.3 The MAC’s findings, published on 4<sup>th</sup> November, are that, on the basis of the indicators of labour market performance which it has used, the UK labour market is currently in a state of serious disturbance and that lifting the current restrictions at this stage would risk negative impacts on the labour market. In particular, the Committee has concluded that it is likely that removing the current restrictions would cause inward flows to increase and cause those who currently come to the UK for temporary purposes to seek more permanent employment in the UK. In addition, the Committee has also suggested that increased labour market participation by Bulgarian and Romanian workers in these circumstances would tend to be concentrated in

lower skilled occupations where the risk of displacement of domestic workers is higher.

- ***Consolidation***

7.4 The Home Office does not intend to consolidate these Regulations.

## **8. Consultation outcome**

8.1 The decision to extend the 2006 Regulations for a further two years is based on advice from the MAC. The MAC's report, including details of the consultation it undertook in connection with it, is being made publicly available.

## **9. Guidance**

9.1 Guidance on compliance with the existing Regulations has been available since the transitional measures were introduced in 2006.

## **10. Impact**

10.1 The extension of the restrictions places no new burdens on business, charities or voluntary bodies. It is an offence for an employer to employ a Bulgarian and Romanian national to work in breach of the scheme. It is also an offence for a Bulgarian and Romanian national to work in breach of the scheme. Applications for an accession worker authorisation document are not subject to a fee.

10.2 The impact on the public sector is the cost of continuing to administer this scheme.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the requirement to apply for accession worker authorisation documentation falls to the worker rather than the employer. Guidance for employers on compliance with the transitional measures is available on the United Kingdom Border Agency website at:

<http://www.ukba.homeoffice.gov.uk/eucitizens/bulgaria-romania/>

## **12. Monitoring & review**

12.1 The Government has no plans to further review the case for maintaining these restrictions. Statistics on the number of authorisations issued under these arrangements are included in the Home Office's quarterly Control of Immigration statistics.

### **13. Contact**

Ragnar Clifford at the United Kingdom Border Agency Tel: 0114 207 2444 or email: [Ragnar.Clifford6@homeoffice.gsi.gov.uk](mailto:Ragnar.Clifford6@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.