EXPLANATORY MEMORANDUM TO

THE ACCESSION (WORKER AUTHORISATION AND WORKER REGISTRATION (AMENDMENT)) REGULATIONS 2009

2009 No. 2426

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

2. Purpose of the instrument

2.1 These Regulations amend the Accession (Immigration and Worker Authorisation) Regulations 2006 (the "2006 Regulations") to allow certain categories of Romanian and Bulgarian nationals to work without requiring authorisation under the 2006 Regulations. Similar changes are made to the Accession (Immigration and Worker Registration) Regulations 2004 (the "2004 Regulations") exempting workers from the 2004 accession States from the need to register under the 2004 Regulations. These changes are required to make the 2004 and 2006 Regulations compatible with European Community law.

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

3.1 None.

4. Legislative Context

4.1 The 2006 Regulations require Bulgarian and Romanian nationals to apply for authorisation from the Home Office prior to starting work in the United Kingdom unless they fall within one of the exempt categories of worker set out in regulation 2 of the 2006 Regulations. This restriction on access to the United Kingdom labour market is imposed pursuant to a derogation from the normal European Community rules on the free movement of workers. The derogation is set out in the Accession Treaty for Bulgaria and Romania (signed in Luxembourg on 25th April 2005).

4.2 Under the derogation Member States may, during the first two years following accession, restrict access to their labour market by the family members of Bulgarian and Romanian workers. Regulation 2 of the 2006 Regulations accordingly did not exempt from the need for authorisation the Bulgarian and Romanian family members of Bulgarian and Romanian workers who are working in the UK under an authorisation issued under those Regulations. The derogation provides, however, that from 2009 the spouse of a worker and their descendants who are under 21 years of age or are dependants should be given unrestricted access to Member States' labour

markets. Regulation 2 of the 2006 Regulations is being amended to comply with this requirement.

4.3 In addition, regulation 2 is being amended to exempt Bulgarian and Romanian spouses, civil partners and children under 18 of a person who has leave to enter or remain in the United Kingdom under the immigration rules which allows that person to work where such family members would have been allowed to work pre-accession under those rules. This is to comply with a standstill clause in the derogation providing that the conditions regulating access to a Member State's labour market post-accession should not be more restrictive than those applying when the Treaty of Accession was signed.

4.3 The 2004 Regulations require nationals from eight of the 2004 accession States to comply with the worker registration scheme established by the Regulations to work in the United Kingdom unless they fall within one of the exempt categories of worker set out in regulation 2 of the Regulations. This restriction on access to the United Kingdom labour market is imposed pursuant to a derogation set out in the Accession Treaty for those States (signed in Athens on 16th April 2003), which is in substance the same as the derogation in the Accession Treaty for Bulgaria and Romania. Regulation 2 of the 2004 Regulations is being amended to exempt from the controls in the Regulations nationals from the relevant 2004 accession State who are spouses, civil partners and children under 18 of a person who has leave to enter or remain in the United Kingdom under the immigration rules which allows that person to work. This is to comply with the standstill clause in the 2003 Accession Treaty.

4.4 And family members of workers from the relevant 2004 or 2007 accession States are being exempted from the need to register under the 2004 Regulations to comply with the 2003 and 2005 Accession Treaties.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 As explained above, these Regulations amend the 2004 and 2006 Regulations in order to comply with European Community law. The effect of these amendments will be to extend the categories of nationals from the 2004 and 2007 accession States who have unrestricted access to the United Kingdom labour market.

- ***Consolidation***

7.2 The department does not intend to consolidate the relevant legislation.

8. Consultation outcome

8.1 No consultation was necessary.

9. Guidance

9.1 Guidance on the effect of these changes will be placed on the UK Border Agency's website under the "Working in the UK" section.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none.

10.2 The impact on the public sector is none.

10.3 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This is an obligation under the Accession Treaties, not subject to domestic review. The impact of the changes will be monitored through the quarterly reviews published by the UK Border Agency.

13. Contact

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