EXPLANATORY MEMORANDUM TO

THE ACCESSION OF CROATIA (IMMIGRATION AND WORKER AUTHORISATION) REGULATIONS 2013

2013 No. [XXXX]

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

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

2. Purpose of instrument

2.1 On 1st July 2013 Croatia will accede to the European Union. These draft Regulations introduce transitional provisions to restrict the free movement rights of Croatian workers on the date of accession. They establish a worker authorisation scheme restricting access to the UK labour market by certain Croatian nationals during a five year transitional period (from 1st July 2013 to 30th June 2018).

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

3.1 None.

4. Legislative Context

4.1 The treaty concerning the accession of the Republic of Croatia to the European Union, signed at Brussels on 9th December 2011, provided for the accession of Croatia to the European Union on 1st July 2013. On accession, Croatian nationals will become EEA nationals and will therefore be entitled to the same rights as other EAA nationals, including the right to enter and reside in other Member States. Annex V of the treaty, however, permits Member States to derogate from various freedom of movement of persons provisions under EU law for a transitional period of five years. The Secretary of State makes these Regulations in exercise of the powers conferred by section 4 of the European Union (Croatian Accession and Irish Protocol) Act 2013 ("2013 Act"), which essentially gives effect to Annex V of the treaty by allowing the Secretary of State to regulate Croatian national's access the UK's labour market. This is the first use of this power.

4.2 The key provision of these draft regulations is regulation 8 as it 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. Croatian nationals subject to worker authorisation will only have a right to reside in the United Kingdom as workers whilst they are working in accordance with the work authorisation scheme and there are various penalties and offences set out in the draft Regulations for breaching these worker authorisation requirements.

4.3 At present, the immigration position of Croatian nationals is regulated under the Immigration Act 1971. When Croatia accedes to the EU, Croatian nationals will instead

be able to rely on EU rights of free movement as set out in the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003, as amended) ("the EEA Regulations"), except where their rights are restricted by these draft Regulations. Regulation 6 of these draft Regulations makes transitional provision to take account of the fact that on 1st July 2013 Croatian nationals and their family members will generally fall to be treated for immigration purposes under the EEA Regulations rather than under the third country national immigration regime set out in the Immigration Act 1971.

5. Territorial Extent and Application

5.1 This instrument extents and applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Mark Harper MP has made the following statement regarding human rights:

> "In my view the provisions of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 are compatible with the Convention rights."

7. Policy background

7.1 The policy objective of section 4 of the 2013 Act was to provide a specific domestic legislative power to allow the Secretary of State to derogate from the full range of EU free movement of persons rights in relation to Croatian workers. These Regulations have been drafted with the aim of ensuring a smooth transition from the 1971 Immigration Act regime of control to EU rules on free movement of persons as they regulate access to the UK labour market by Croatian nationals in accordance with the terms of the accession treaty. The policy aims have been fulfilled as these Regulations temporarily prevent Croatian nationals from having free access to the UK's labour market.

7.2 The following is a brief explanation of the Regulations. Part 1 of these Regulations (regulations 1 to 3) contains interpretative provisions. In particular, regulation 2 defines "accession State national subject to worker authorisation" and sets out a number of different classes of Croatian nationals who do not fall within that definition. For example, those with permission to work prior to accession continue to have this permission.

7.3 Part 2 of these Regulations (regulations 4 to 7) make provision in relation to various existing instruments. Regulation 4 states that these Regulations derogate from the free movement of worker provisions in EU law. Regulation 5 provides that, under the EEA Regulations, accession State national subject to worker authorisation cannot be treated as jobseekers and only have a right to reside in the United Kingdom by virtue of their worker status whilst they are duly authorised to do so. Regulation 6 sets out general transitional provisions, as described above. Regulation 7 makes provision in relation to EEA registration certificates and residence cards issued under the EEA Regulations to certain Croatian nationals during the accession period.

7.4 Part 3 (regulations 8 to 10) sets out the requirements for accession State nationals subject to worker authorisation to obtain authorisation to work. Regulation 8 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. A passport or other travel document suitably endorsed under the 1971 Act before accession will count as such a document. In other cases, worker authorisation registration certificates issued under regulation 10 are required.

7.5 Regulations 9 and 10 set out procedure for applying for worker authorisation registration certificates and the issuing of worker authorisation registration certificates. Such certificates can only be issued where a person meets relevant requirements for certain authorised categories of employment. The requirements and categories are set out in the Statement of relevant requirements published by the Secretary of State and appended to this Explanatory Memorandum. In relation to an authorised category of employment, the Statement sets out the relevant requirements which, subject to any necessary modifications, a person in that category of employment was obliged to meet under the immigration rules in force on 9th December 2011 in order to obtain entry clearance or leave to enter or remain in the United Kingdom.

7.6 The purpose and effect of this Statement, consistent with the terms of Annex V to the treaty on the accession of Croatia, is to ensure that the relevant requirements for an accession State national subject to worker authorisation are no more restrictive than those which applied to a Croatian national applying for a grant of entry clearance or leave to enter or remain in a relevant category of employment under the immigration rules in force on the date that the treaty concerning the accession of the Republic of Croatia to the European Union was signed (9th December 2011). This Statement applies the immigration rules as they were on 9th December 2011 with such modifications as are consistent with the provisions of that Annex which permits the United Kingdom to apply national measures that derogate from EU rules on the free movement of persons to the extent necessary to regulate access to the labour market.

7.7 The modifications are necessary to simplify the requirements which apply, to increase transparency and to ensure that the requirements go no further than permitted in EU law. The Explanatory Note of the Statement sets out some examples of the modifications.

7.8 Part 4 of these Regulations (regulations 11 to 18) deals with the penalties and offences for breaching the worker authorisation requirements in these Regulations.

7.9 Regulation 11 provides for the issuing of penalty notices where an employer employs an accession State national subject to worker authorisation in breach of these Regulations. Regulations 12 and 13 set out how an employer can object to, or appeal against, such a penalty notice respectively. Regulation 14 sets out an enforcement provision for the Secretary of State to recover a penalty imposed under regulation 11. Regulation 15 makes it an offence for an employer knowingly to employ an accession State national subject to worker authorisation in breach of the Regulations. Regulation 16 makes it an offence for an accession State national subject to worker authorisation to work in breach of the Regulations. Regulation 16 also makes provision to allow the liability of such a national to conviction for this offence to be discharged by the payment of a fixed penalty issued by a constable or immigration officer. Regulation 17 makes it an offence for a person to obtain a worker authorisation registration certificate by deception.

Regulation 18 applies various enforcement provisions in the 1971 Act for the purposes of offences under regulations 16 and 17.

7.10 The Schedule makes various consequential amendments to the EEA Regulations.

8. Consultation outcome

8.1. The application of transitional measures to Croatian nationals has not been the subject of consultation. However, the Home Office published a statement of intention in October 2012 to facilitate the passage of the 2013 Act.

9. Guidance

9.1 Information and guidance for individuals seeking documentation under these arrangements and for employers will be made available before these Regulations come into effect.

10. Impact

10.1 An Impact Assessment in respect of the Government's decision to apply transitional measures to Croatian nationals was published by the Home Office on 18 October 2012 and can be found at:
https://www.gov.uk/government/publications/accession-of-croatia-to-the-eu.

10.2 The effect of these Regulations is that Croatian nationals will be able to access the labour market in the UK to at least the same degree that they were able to prior to accession.

10.3 The provisions in respect of employer liability replicate the existing regime under sections 15 to 23 of the Immigration, Asylum and Nationality Act 2006. They therefore place no new or additional burden upon business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 Companies wishing to employ a Croatian national and which meet the definition of a small company as set out in section 382 of the Companies Act 2006 will be required to pay a smaller fee (currently £515) in order to be licensed for the purpose of issuing certificates of sponsorship than that applied to other companies (currently £1545).

12. Monitoring and Review

12.1 The Government will keep the case for maintaining transitional restrictions on nationals of Croatia under review. The treaty on the accession of Croatia requires those Member States that apply transitional restrictions to Croatian nationals to notify the European Commission no later than two years from the date of accession whether they will continue to apply national measures, and the Government will review the need to maintain transitional restrictions before any such notification is sent.

13. Contact

13.1 Ragnar Clifford at the Home Office (Tel: 0114 207 2444 or e-mail: Ragnar.Clifford6@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.

Home Office

STATEMENT OF RELEVANT REQUIREMENTS

May 2013

This statement sets out the relevant requirements which must be met for the purpose of regulations 9 and 10 of the Croatian Regulations.

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A. Summary

1. In relation to an authorised category of employment, this statement sets out the relevant requirements which, subject to any necessary modifications, a person in that category of employment was obliged to meet under the immigration rules in force on 9th December 2011 in order to obtain entry clearance or leave to enter or remain in the United Kingdom.

B. General relevant requirements

2.The general relevant requirements for the purposes of regulations 9 and 10 of the Croatian Regulations are those set out in paragraphs 3 to 34 of this statement.

Requirements for all Tier 2 or Tier 5 applications

3.Where the applicant is in an authorised category of employment by virtue of having been issued with a certificate of sponsorship under Tier 2 or Tier 5 of the Points Based System—

(a) the certificate of sponsorship must specify the category and, where appropriate, the sub-category, of Tier 2 or Tier 5 employment for which it has been issued; and

(b) the applicant must provide a valid certificate of sponsorship reference number, a certificate of sponsorship reference number being only valid if—

(i) the number supplied links to a certificate of sponsorship checking service entry that names the applicant as the worker;

(ii) the sponsor assigned the certificate of sponsorship reference number to the applicant no more than 3 months before the application for a worker authorisation registration certificate is made;

(iii) the application for a worker authorisation registration certificate is made no more than 3 months before the start of the employment as stated on the certificate of sponsorship;

(iv) the worker has not previously applied for a worker authorisation registration certificate using the same certificate of sponsorship reference number; and

(v) the reference number has not been withdrawn or cancelled by the sponsor or by the Secretary of State since it was assigned.

Tier 2 (General)

4. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued under the Tier 2 (General) category of the Points Based System—

(a) the employment must—

(i) be in a shortage occupation;

(ii) meet the requirements of the resident labour market test or be exempt from the labour market test; or

(iii) be a continuation of employment in the same occupation for the same sponsor;

(b) the employment must appear on table 3 (occupations skilled to National Qualifications (NQF) Framework level 4 or above), as set out in appendix J (codes of practice for Tier 2 sponsors, Tier 5 sponsors and employers of work permit holders) of the immigration rules; and

(c) the employment must be paid the appropriate salary.

5. In paragraph 4, the employment is in a shortage occupation if—

(a) the employment is in an occupation which, at the time the certificate of sponsorship was assigned to the applicant, appeared on table 1 (United Kingdom shortage occupation list) and table 2 (Scotland only shortage occupation list) in appendix K (shortage occupation list) of the immigration rules;

(b) the contracted working hours are for at least 30 hours a week; and

(c) where table 2 (Scotland only shortage occupation list) in appendix K (shortage occupation list) of the immigration rules specifies that the occupation is a shortage occupation for Scotland only, the job offer is for employment requiring the applicant to work at a location in Scotland.

6. In paragraph 4, the employment meets the requirements of the resident labour market test if—

(a) the sponsor has advertised the vacancy in accordance with the requirements set out in tables 11B (advertising methods and duration which satisfy the resident labour market test) and 11C (advertising media which satisfy the resident labour market test) of appendix A (attributes) of the immigration rules;

(b) the advertisement has stated—

(i) the job title;

(ii) the main duties and responsibilities of the employment;

(iii) the location of the employment;

(iv) an indication of the salary package or salary range or terms on offer;

(v) the skills, qualifications and experience required for the employment; and

(vi) the closing date for applications, unless it is part of the sponsor's rolling recruitment programme, in which case the advertisement should show the period of the recruitment programme;

(c) unless the employment appears on table 1 (occupations skilled to PhD level), of appendix J (codes of practice for Tier 2 sponsors, Tier 5 sponsors and employers of work permit holders) of the immigration rules, the sponsor has been unable to find a settled worker who is—

(i) suitably qualified to fill the vacancy as advertised, and

(ii) available to fill the vacancy; and

(d) the certificate of sponsorship checking service entry contains full details of when and where the job was advertised, and any advertisement reference numbers, including the Jobcentre Plus or JobCentre online vacancy reference number if table 11B (advertising methods and duration which satisfy the resident labour market test) of appendix A (attributes) of the immigration rules specifies that the job must have been advertised in Jobcentre Plus or JobCentre online.

7. In paragraph 4, the employment is one to which an exemption from the resident labour market test applies if—

(a) the salary is no less than £152,100 per year;

(b) the employment is a supernumerary research position, where the applicant has been issued a scientific research award or fellowship by an external organisation that is not the sponsor, and the funding is not transferrable to any other applicant;

(c) the employment is to continue working as a doctor or dentist in training, under the same NHS training number which was assigned to the applicant for previous lawful employment as a doctor or dentist in training in the United Kingdom; or

(d) the employment offer is as a doctor in speciality training where the applicant's salary and the costs of his training are being met by the government of another country under an agreement between that country and the United Kingdom.

8. In paragraph 4, the employment is work in the same employment for the same sponsor if—

(a) the sponsor is the same employer as the employer specified in the most recent grant of an accession worker authorisation document in respect of the applicant; and

(b) the employment is in the same occupation as the employment specified in the most recent grant of an accession worker authorisation document in respect of the applicant.

9. In paragraph 4, the employment is paid the appropriate salary if the salary is—

(a) no less than £20,300 per year; and

(b) no less than the appropriate rate for the job as set out in paragraph 14 (appropriate salary rates) of, and the corresponding tables in, appendix J (codes of practice for Tier 2 sponsors, Tier 5 sponsors and employers of work permit holders) of the immigration rules.

10. In paragraphs 7 and 9, salary means the applicant's gross annual salary—

(a) inclusive of allowances, such as London weighting, which would be paid to a settled worker in similar circumstances;

(b) exclusive of other benefits, such as bonus or incentive pay, employer pension contributions, and payments to cover business expenses (including travel to and from the applicant's home country); and

(c) exclusive of overtime payments.

11. For the purposes of paragraph 10, where the applicant is paid hourly, the salary calculation will take account of earnings up to a maximum of 48 hours a week.

Tier 2 (Intra-Company Transfer)

12. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued under the Tier 2 (Intra-Company Transfer) category of the Points Based System—

(a) the employment must appear on table 3 (occupations skilled to National Qualifications (NQF) Framework level 4 and above), as set out in appendix J (codes of practice for Tier 2 sponsors, Tier 5 sponsors and employers of work permit holders) of the immigration rules;

(b) the employment must be paid the appropriate salary;

(c) except where he holds a certificate of sponsorship issued under the graduate trainee or skills transfer sub-categories of the Tier 2 (Intra-Company Transfer) category, the applicant—

(i) must have been working for the sponsor for a continuous period of 12 months immediately prior to the date of application, or

(ii) must have been working for the sponsor for an aggregated period of at least 12 months within the 24 month period immediately prior to the date of application if, at some point within the 12 months preceding the date of application, the applicant has been—

(aa) on maternity, paternity or adoption leave; or

(bb) on sick leave lasting one month or longer;

and in relation to both sub-paragraphs (i) and (ii), must provide the specified documents;

(d) where the certificate of sponsorship has been issued in the graduate trainee sub-category—

(i) the employment must form part of a structured graduate training programme, with clearly defined progression towards a managerial or specialist role within the organisation;

(ii) the sponsor must have assigned certificates of sponsorship to no more than 4 other persons under the graduate trainee sub-category during the year beginning on 6 April and ending on 5 April in which the certificate of sponsorship was assigned to the applicant; and

(iii) the applicant must have been working for the sponsor outside the United Kingdom for a continuous period of 3 months immediately prior to the date of application, and must provide the specified documents; and

(e) where the certificate of sponsorship has been issued in the skills transfer sub-category, the employment that the certificate of sponsorship checking service entry records that the person is being sponsored to do must be for the sole purpose of transferring skills to or from the sponsor's presence in the United Kingdom and must be additional to the sponsor’s normal staffing requirements.

13. In paragraph 12, the employment is paid the appropriate salary if the salary is—

(a) no less than £24,300 per year; and

(b) no less than the appropriate rate for the job as set out in paragraph 14 (appropriate salary rates) of, and the corresponding tables in, appendix J (codes of practice for Tier 2 sponsors, Tier 5 sponsors and employers of work permit holders) of the immigration rules.

14. In paragraph 13, the salary is the applicant's gross annual salary—

(a) inclusive of allowances which would be paid to a settled worker in similar circumstances or, subject to paragraph 15, are paid to cover the additional cost of living in the United Kingdom;

(b) exclusive of other benefits, such as bonus or incentive pay, employer pension contributions, and payments to cover business expenses, including (but not limited to) travel to and from the sending country; and

(c) exclusive of overtime payments.

15. For the purposes of paragraph 14(a), a cap applies to the effect that an allowance made available solely for the purpose of accommodation cannot account for more than 40% of the gross annual salary, so that, for example, where an applicant receives an accommodation allowance of £12,000 in addition to other payments of £12,000 (making payments of £24,000 in total), the £12,000 of other payments must account for at least 60% of the applicant’s gross annual salary, so that only £8,000 of the accommodation allowance would count towards the calculation of the applicant’s gross annual salary, (which would be £20,000 in this example, and therefore not meet the requirements in paragraph 13(a)).

16. For the purposes of paragraph 14, where the applicant is paid hourly, the salary calculation will be based on earnings up to a maximum of 48 hours a week.

17. In paragraph 12, the specified documents are—

(a) payslips which cover the payments made by the sponsor to the applicant for the full period of 12 months, or 3 months (as the case may be), with the most recent payslip dated no later than 31 days before the date of the application;

(b) personal bank or building society statements covering the full period of 12 months, or 3 months (as the case may be), which clearly show—

(i) the applicant's name;

(ii) the account number;

(iii) the date of the statement (the most recent statement must be dated no earlier than 31 days before the date of the application); and

(iv) payments by the sponsor covering the full period of 12 months, or 3 months (as the case may be); or

(c) a building society pass book, which clearly shows—

(i) the applicant's name;

(ii) the account number; and

(iii) payments by the sponsor covering the full specified period.

18. Subject to paragraph 19, where a period of previous employment falling within paragraph 12(c)(ii) includes a period of maternity, paternity or adoption leave, the specified documents are also—

(a) the original full birth certificate or original full certificate of adoption (as appropriate) containing the names of the parents or adoptive parents of the child for whom the leave was taken, if this is available; and

(b) at least one (or both, if the document in sub-paragraph (a) is unavailable) of the following—

(i) an original letter from the sponsor, on company headed paper, confirming the start and end dates of the applicant's leave; or

(ii) one of the types of documents set out in paragraph 17, covering the entire period of leave, and showing the maternity, paternity or adoption payments.

19. If the applicant cannot provide two of the specified documents in paragraph 18, he must provide at least one of the specified documents in paragraph 18, with a full explanation of why the other documents cannot be provided, and at least one of the following, from an official source and which is independently verifiable—

(a) official adoption papers issued by the relevant authority;

(b) any relevant medical documents; or

(c) a relevant extract from a register of births which is accompanied by an original letter from the issuing authority confirming the authenticity of the extract.

20. Subject to paragraph 21, where a period of previous employment falling within paragraph 12(c)(ii) includes a period of sick leave, the specified documents are also—

(a) an original letter from the sponsor, on the sponsor’s headed paper, confirming the start and end dates of the applicant's leave; and

(b) one of the types of documents set out in paragraphs 17, covering the entire period of leave, and showing the statutory sick pay or sick pay from health insurance paid to the applicant, if these documents are available.

21. If the applicant cannot provide two of the specified documents in paragraph 20, he must provide one of the specified documents paragraph 20, with a full explanation of why the other document cannot be provided, and any relevant medical documents, from an official source and which are independently verifiable.

Tier 2 (Minister of Religion)

22. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued under the Tier 2 (Minister of Religion) category of the Points Based System—

(a) the applicant must be sponsored for the purpose of employment which requires the applicant to perform religious duties, which—

(i) may include preaching, pastoral work and non pastoral work; but

(ii) must not involve mainly non-pastoral duties, such as school teaching, media production, domestic work, or administrative or clerical work, unless the role is a senior position;

(b) the applicant must be qualified to undertake the employment;

(c) where the sponsor is a religious order, the applicant must be a member of that order;

(d) the pay and conditions of the employment must at least equal those given to a settled worker in the same employment, and the remuneration must conform with the requirements of National Minimum Wage Act 1998; and

(e) the employment must meet the requirements of the resident labour market test, unless the applicant has previously been granted an accession worker authorisation document for the purpose of employment in the same role and by the same sponsor.

23. In paragraph 22, the requirements of the resident labour market test are met if—

(a) the employment is additional to the sponsor's normal staffing requirements;

(b) the sponsor holds national records of all available individuals and confirms that the records show that no suitable settled worker is available to fill the role; or

(c) the sponsor has undertaken a national recruitment search and provides—

(i) details of how the employment was advertised, which must be at least one of the following—

(aa) an advertisement in a nationally available publication specific to the sponsor's religion or denomination,

(bb) an advertisement on the sponsor's own website, if that is how the sponsor normally advertises vacant positions, and the pages containing the advertisement are free to view, or

(cc) an advertisement through Jobcentre Plus (or in Northern Ireland, JobCentre Online) or in the employment section of a national newspaper, if the sponsor is unable to use the means described in sub-paragraphs (aa) and (bb),

and in each case, any reference numbers for the advertisements;

(ii) details of the period the employment was advertised for, which must be at least 28 days during the 6 month period immediately before the date the sponsor assigned the certificate of sponsorship to the applicant; and

(iii) confirmation that no suitable settled workers are available to be recruited for the employment.

Tier 2 (Sportsperson)

24. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued under the Tier 2 (Sportsperson) category of the Points Based System, the certificate of sponsorship must confirm that—

(a) the applicant is qualified to undertake the employment; and

(b) the body specified in paragraph 1 and the corresponding table of appendix M (sports governing bodies for Tier 2 (Sportsperson) and Tier 5 (Temporary Worker – Creative and Sporting) applications) of the immigration rules as being the governing body for the sport in question has provided an endorsement confirming that—

(i) the applicant is internationally established at the highest level;

(ii) the applicant's employment will make a significant contribution to the development of his sport at the highest level in the United Kingdom; and

(iii) no suitable settled workers are available to be recruited for the employment.

Tier 5 (Temporary Worker)

25. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued in the creative and sporting sub-category under Tier 5 of the Points Based System for the purpose of employment as a sportsperson, the certificate of sponsorship must confirm that the

body specified in paragraph 1 of, and the corresponding table in, appendix M (sports governing bodies for Tier 2 (Sportsperson) and Tier 5 (Temporary Worker – Creative and Sporting) applications) of the immigration rules as being the governing body for the sport in question has provided an endorsement which confirms that—

(a) the applicant is internationally established at the highest level or will make a significant contribution to the development of his sport at the highest level in the United Kingdom; and

(b) no suitable settled workers are available to be recruited for the employment.

26. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued in the creative and sporting sub-category under Tier 5 of the Points Based System for the purpose of employment as a creative worker, the certificate of sponsorship must confirm that the body specified in paragraph 1 of, and the corresponding table in, appendix M (sports governing bodies for Tier 2 (Sportsperson) and Tier 5 (Temporary Worker – Creative and Sporting) applications) of the immigration rules as being the governing body for the creative sector in question has provided an endorsement which confirms that—

(a) the sponsor has taken into account the needs of the resident labour market in that field, as set out in table 9 (creative sector codes of practice) in appendix J (codes of practice for Tier 2 sponsors, Tier 5 sponsors and employers of work permit holders) of the immigration rules; and

(b) no suitable settled workers are available to be recruited for the employment.

27. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued in the charity workers sub-category under Tier 5 of the Points Based System, the applicant must be sponsored for the purpose of employment which is—

(a) voluntary fieldwork directly related to the purpose of the charity which is sponsoring the applicant;

(b) not paid, except for reasonable expenses outlined in section 44 of the National Minimum Wage Act 1998; and

(c) not a permanent position.

28. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued in the religious workers sub-category under Tier 5 of the Points Based System, the applicant must—

(a) be sponsored for the purpose of employment—

(i) which requires the applicant to perform religious duties, which may include preaching, pastoral work and non pastoral work;

(ii) for which the applicant will receive pay and conditions at least equal to those given to a settled worker in the same role, and the remuneration conforms with the requirements of National Minimum Wage Act 1998; and

(iii) which meets the requirements of the resident labour market test specified in paragraph 23 of this statement, unless the applicant has previously been granted accession worker authorisation document for the purpose of employment in the same role and by the same sponsor; and

(b) where the sponsor is a religious order, be a member of that order.

29. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued in the government authorised exchange sub-category under Tier 5 of the Points Based System—

(a) the applicant must hold a certificate of sponsorship which has been issued under an exchange scheme as set out in appendix N (approved Tier 5 government authorised exchange schemes) of the immigration rules; and

(b) the employment which the applicant will undertake as a participant in that exchange scheme must—

(i) not constitute a vacancy;

(ii) appear on the table 3 (occupations skilled to National Qualifications (NQF) Framework level 4 and above), as set out in the codes of practice in appendix J (codes of practice for Tier 2

sponsors, Tier 5 sponsors and employers of work permit holders) of the immigration rules, unless the applicant is being sponsored under an exchange scheme set up as part of the European Commission's lifelong learning programme; and

(iii) conform with the National Minimum Wage Act 1998 and the Working Time Regulations 1998 (and, where applicable, the Working Time Regulations (Northern Ireland) 1998).

30. Where the applicant is applying for a worker authorisation registration certificate as the holder of a valid certificate of sponsorship issued in the international agreement sub-category under Tier 5 of the Points Based System, the applicant must be—

(a) an employee of an overseas government; or

(b) an employee of an international organisation established by international treaty to which the United Kingdom or European Union is a party; or

(c) a private servant of a member of a diplomatic mission under the provisions of the Vienna Convention on Diplomatic Relations 1961.

Representative of an overseas business

31. Where the applicant is applying for a worker authorisation registration certificate for the purpose of employment as the representative of an overseas business, the applicant must—

(a) have been recruited and taken on as an employee outside the United Kingdom of a business which has its headquarters and principal place of business outside the United Kingdom and which has no existing branch, subsidiary or other representative in the United Kingdom; and

(b) intend to work in the United Kingdom—

(i) as a senior employee of that business with full authority to take operational decisions on behalf of the overseas business for the purpose of representing it in the United Kingdom by establishing and operating a registered branch or wholly owned subsidiary of that overseas business, the branch or subsidiary of which will be concerned with the same type of business activity as the overseas business; or

(ii) as an employee of an overseas newspaper, news agency or broadcasting organisation being posted on a long-term assignment as a representative of their overseas employer; and

(c) where sub-paragraph (b)(i) applies—

(i) be the sole representative of the employer present in the United Kingdom;

(ii) intend to be employed full time as a representative of that overseas business; and

(iii) not be a majority shareholder in that overseas business.

Postgraduate doctor or dentist

32. Where the applicant is applying for a worker authorisation registration certificate for the purpose of employment as a postgraduate doctor or dentist, the applicant must—

(a) intend to work in the United Kingdom as a postgraduate doctor or dentist on a recognised foundation programme; and

(b) have been awarded a degree in medicine or dentistry by—

(i) an institution which has been licensed by the Secretary of State under Tier 4 of the Points Based System; or

(ii) a higher education institution which, on the date of the award, is a United Kingdom recognised body or an institution that is not a United Kingdom recognised body but which provides full courses that lead to the award of a degree by a United Kingdom recognised body.

Domestic worker in a private household

33. Where the applicant is applying for a worker authorisation registration certificate in order to take employment as a domestic servant in a private household, the applicant must—

(a) be aged between 18 and 65;

(b) have been employed as a domestic worker for one year or more immediately prior to the application at a place which the employer regularly resides;

(c) intend to work for the employer whilst the employer is in the United Kingdom; and

(d) have agreed in writing terms and conditions of employment in the United Kingdom with the employer, including specifically that the applicant will be paid in accordance with the National Minimum Wage Act 1998 and any Regulations made under it; and

(e) provide the specified documents.

34. In paragraph 33, the specified documents are—

(a) a letter from the employer confirming that the domestic worker has been employed by them in that capacity for the twelve months immediately prior to the date of application; and

(b) one of the following documents covering the same period of employment as that in sub-paragraph (a)—

(i) pay slips or bank statements showing payment of salary;

(ii) confirmation of tax paid;

(iii) confirmation of health insurance paid;

(iv) contract of employment;

(v) work visa, residence permit or equivalent passport endorsement for the country in which the domestic worker has been employed by that employer; or

(vi) visas or equivalent passport endorsement to confirm that the domestic worker has travelled with the employer.

C. Relevant requirements: English language

35. The relevant requirements for proficiency in the English language for the purposes of regulations 9 and 10 of the Croatian Regulations are those set out in paragraphs 36 to 43 of this statement.

36. Where an application is made for a worker authorisation registration certificate on the basis that the applicant is in an authorised category of employment specified in the first column of table 1, the corresponding English language requirement is that specified in the second column of table 1.

Table 1

Type of application	***Relevant English language requirement***
Application for a worker authorisation registration certificate on the basis of a certificate of sponsorship under Tier 2 (General)	A knowledge of English equivalent to level B1 or above of the Council of Europe's common European framework for language learning
Application for a worker authorisation registration certificate on the basis of a certificate of sponsorship under Tier 2 (Minister of Religion)	A knowledge of English equivalent to level B2 or above of the Council of Europe's common European framework for language learning
Application for a worker authorisation registration certificate on the basis of a certificate of sponsorship under Tier 2 (Sportsperson) or (Representative of an overseas business)	A knowledge of English equivalent to level A1 or above of the Council of Europe's common European framework for language learning

37. The relevant English language requirement as set out in table 1 will be met if the applicant—

(a) is a national of a majority English-speaking country;

(b) has been awarded a degree taught in English; or

(c) has passed an English language test.

38. The applicant will be considered to be a national of a majority English-speaking country if he—

(a) is a national of one of the following countries—

Antigua and Barbuda
Australia
The Bahamas
Barbados
Belize
Canada
Dominica
Grenada
Guyana
Jamaica
New Zealand
St Kitts and Nevis
St Lucia
St Vincent and the Grenadines
Trinidad and Tobago
USA; and

(b) provides the specified document.

39. In paragraph 38, the specified document is his current original passport or travel document which shows that the applicant is a national of a country specified in paragraph 38. If the applicant is unable to provide this document, the Secretary of State may exceptionally consider this requirement to be met where the applicant provides full reasons as to why the specified document cannot be provided and an original letter from the home government or embassy of a country specified in paragraph 38, on the headed paper of that government or embassy and which has been issued by an authorised official of that government or embassy, confirming the applicant's full name, date of birth and nationality.

40. The applicant will be considered to have been awarded a degree taught in English if he—

(a) has obtained an academic qualification which either—

(i) is deemed by United Kingdom National Recognition Information Centre (NARIC) to meet the recognised standard of a Bachelor's degree (not a Master's degree or a PhD) in the United Kingdom, and United Kingdom NARIC has confirmed that the degree was taught or researched in English to level C1 of the Council of Europe's common European framework for language learning or above; or

(ii) is deemed by United Kingdom NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the United Kingdom, and is from an educational establishment in one of the following countries—

Antigua and Barbuda
Australia
The Bahamas
Barbados
Belize
Dominica
Grenada
Guyana
Ireland
Jamaica
New Zealand
St Kitts and Nevis
St Lucia

St Vincent and The Grenadines
Trinidad and Tobago
United Kingdom
USA; and

(b) provides the specified documents.

41. In paragraph 40, the specified documents are—

(a) the original certificate of the award; or

(b) if the applicant is awaiting graduation having successfully completed the qualification, or no longer has the certificate and the awarding institution is unable to provide a replacement, an academic transcript (or original letter in the case of a PhD qualification) from the awarding institution on its official headed paper, which clearly shows—

(i) the applicant's name;

(ii) the name of the awarding institution;

(iii) the title of the award;

(iv) confirmation that the qualification has been or will be awarded (as the case may be); and

(v) the date that the certificate will be issued (if the applicant has not yet graduated) or confirmation that the institution is unable to reissue the original certificate or award (as the case may be).

42. The applicant will be considered to have passed an English language test if—

(a) he has passed an English language test provided by an English language test provider approved by the Secretary of State for these purposes, as listed in appendix O (list of English language tests that have been approved by the UK Border Agency for English language requirements for limited leave to enter or remain under the Immigration Rules) of the immigration rules; and

(b) the specified document issued in respect of that test remains valid on the date that the application for an accession worker registration certificate is made.

43. In paragraph 42, the specified document is the original English language test certificate which clearly shows—

(a) the applicant's name;

(b) the qualification obtained, which must meet or exceed the relevant level shown in table 1 in all four components (reading, writing, speaking and listening), unless the applicant was exempted from sitting a component on the basis of his disability;

(c) the date of the award; and

(d) the period during which the certificate remains valid.

D. General and definitions

44. In this statement, where the relevant requirements require the applicant to provide bank or building society statements, the statements must be printed on paper bearing the bank or building society's letterhead and—

(a) bear the official stamp of the bank on every page; or

(b) be accompanied by a supporting letter from the issuing bank or building society, on company headed paper, confirming the authenticity of the statements provided.

45. In this statement, where the relevant requirements require the applicant to provide payslips, if the payslips were issued to the applicant other than in paper form or on paper that it is not the sponsor's headed paper, the payslip must be accompanied by a letter, written on the sponsor's headed paper and signed by an officer of the sponsor, confirming the authenticity of the payslip.

46. Regulation 1(2) of the Croatian Regulations shall apply to this statement as if the definitions are also definitions for the purposes of this statement.

47. In this statement—

(a) "certificate of sponsorship under Tier 2 or Tier 5 of the Points Based System" means a certificate of sponsorship issued to a Croatian national skilled worker or temporary worker under the arrangements which apply for issuing a certificate of sponsorship to a non-European Economic Area national for the purposes of Part 6A of the immigration rules;

(b) "Croatian Regulations" means the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013;

(c) masculine includes the feminine;

(d) "settled worker" has the meaning given in regulation 2(8) of the Croatian Regulations;

(e) "sick leave" includes absence due to injury as well as illness; and

(f) "United Kingdom recognised body" has the meaning given in regulation 3(4) of the Croatian Regulations.

E. Explanatory Note

The purpose and effect of this Statement, consistent with the terms of Annex V to the Treaty on the accession of Croatia, is to ensure that the relevant requirements for an accession State national subject to worker authorisation are no more restrictive than those which applied to a Croatian national applying for a grant of entry clearance or leave to enter or remain in a relevant category of employment under the immigration rules in force on the date that the treaty concerning the accession of the Republic of Croatia to the European Union was signed (9th December 2011). This Statement applies the immigration rules as they were on 9th December 2011 with such modifications as are consistent with the provisions of that Annex which permits the United Kingdom to apply national measures that derogate from EU rules on the free movement of persons to the extent necessary to regulate access to the labour market.

The modifications are necessary to simplify the requirements which apply, to increase transparency and to ensure that the requirements go no further than permitted in EU law. For example, this Statement ensures that Croatian workers will only be required to meet the minimum skill level (NQF Level 4) that was applied to Tier 2 migrants under the immigration rules as they were on 9th December 2011, as opposed to the minimum skill level (NQF Level 6) that applies to Tier 2 migrants under the current immigration rules. Another example of a modification is the omission of unnecessary provisions, for example, there are no maintenance and accommodation conditions attached to the granting of a worker authorisation registration certificate in this Statement because this is outside the scope of the derogation that is permitted by the accession treaty (i.e. such conditions are not concerned with restricting access to the labour market).