

STATEMENT OF INTENT: ACCESSION OF CROATIA TO THE EUROPEAN UNION: TRANSITIONAL RESTRICTIONS ON LABOUR MARKET ACCESS



Home Office

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INTRODUCTION

1. The Republic of Croatia is expected to join the European Union on 1 July 2013. The Government is committed to applying transitional restrictions on labour market access to nationals of any future Member States of the European Union as a matter of course and such restrictions will therefore be applied to nationals of Croatia when it accedes.
2. The purpose of this Statement of Intent is to outline the transitional restrictions which the Government expects to apply when Croatia accedes. It is being published to coincide with the introduction to Parliament of the EU (Croatian Accession and Irish Protocol) Bill, which contains clauses which will enable the Government to make Regulations implementing the transitional restrictions which it intends to apply to Croatian nationals, and to assist in informing debate on those clauses. An Impact Assessment in respect of these transitional restrictions is also being published and can be found at www.ukba.homeoffice.gov.uk/.
3. This Statement of Intent should not be read as a definitive statement of the controls which will be implemented. It is a statement of the Government's current intentions concerning the use to which the enabling clauses contained in the Bill will be put. The detail of the policy will be confirmed when the Regulations are made.

LEGAL BACKGROUND

4. The legal basis for the planned transitional restrictions is Annex V of the Treaty on the Accession of Croatia to the European Union, which provides for the Member States to apply national measures regulating Croatian nationals' access to their labour markets for a period of up to five years, and in case of serious disturbance to their labour markets or the threat thereof, and after notifying the Commission, for a further two years (i.e. up to a maximum of seven years in total).
5. The terms of Annex V place a number of constraints on the scope of the transitional restrictions which the existing Member States may apply. These include:
 - they may only derogate from free movement Directives to the extent necessary to implement such restrictions;
 - the application of such restrictions shall not result in conditions of access which are more restrictive than those which applied on the date that the Treaty of Accession was signed (the "standstill clause");
 - the application of such restrictions shall observe the principle of Community preference i.e. give preference to workers who are nationals of the Member States over workers who are nationals of third countries as regards labour market access; and
 - Croatian nationals who are admitted to the labour market of a Member State post-accession and who work legally for an uninterrupted period of 12 months will cease to be subject to restrictions on access to the labour market of that Member State.

THE PROPOSED RESTRICTIONS

6. The transitional restrictions which the Government intends to apply to Croatian nationals after 1 July 2013 will have the effect of continuing to apply the employment restrictions to which Croatian nationals are subject under the existing Immigration Rules for third country workers. Croatian nationals will be able, as they are now, to obtain permission to work in skilled occupations but, unless they are exempt from the restrictions or their employment is incidental to the exercise of another Treaty right (for example, they are studying here), they will not be given permission to take low skilled work.
7. Croatian nationals are currently subject to immigration control under the Immigration Act 1971 and, where they are seeking to enter or remain in the United Kingdom for the purpose of employment, they will normally need to obtain leave to enter or remain under the relevant provisions of the Points Based System (PBS). Croatian nationals seeking to enter or remain in the United Kingdom for the purpose of skilled work will normally need to qualify under Tier 2 of the PBS and applications for leave to enter under these arrangements are subject to annual limits. There are separate arrangements under Tier 1 of the PBS for high value economic migrants (entrepreneurs, investors and the exceptionally talented) and under Tier 5 for temporary workers.
8. After 1 July 2013, Croatian nationals will no longer be subject to immigration control and will have an unrestricted right to enter and reside (but not to work) in the UK for up to 3 months. They will therefore no longer require leave to enter or remain in the UK, whether or not they intend to take employment.
9. Under the transitional restrictions which the Government intends to introduce, Croatian nationals will instead be subject to a requirement to obtain work authorisation if they intend to undertake employment in the UK. Where they are required to obtain such work authorisation, a Croatian worker will be able to work legally and will have a right to reside beyond 3 months as a worker only where such authorisation has been granted by the UK Border Agency, and will not have a right to reside as a work seeker. It will be necessary to obtain such authorisation before the worker commences employment in the UK. As explained below, authorisation will only be granted to those Croatians who meet the requirements for skilled economic migrants, as obtained for Tiers 2 and 5 of the Points-Based System at December 2011.

WHO WILL BE SUBJECT TO THE WORK AUTHORISATION REQUIREMENT?

10. In principle, any Croatian national who intends to take employment in the United Kingdom will be subject to the work authorisation requirement. However, the following (this is not an exhaustive list at this stage) will be exempt from the requirement:
 - those Croatian nationals who are legally present in the UK on the date of accession and who, on that date, are not subject to any restrictions on working (for example, those Croatian nationals who have already been granted settlement in the UK);
 - those Croatian nationals who are legally working in the UK on the date of accession and have been legally working for an uninterrupted period of 12 months ending on that date;
 - those Croatian nationals who work legally for an uninterrupted period of 12 months falling partly or wholly after the date of accession;
 - those Croatian nationals who are also a national of the UK or of another Member State whose nationals are not subject to similar restrictions;

- those Croatian nationals who are also the spouse or civil partner of a national of the UK or the family member of an EEA national who has a right to reside in the UK, except where that EEA national is subject to work authorisation;
- those Croatian nationals who are posted to the UK by a business established on the territory of another Member State.

11. In addition:

- we will make provision for Croatian nationals who meet the criteria for a grant of leave to enter under the current Tier 1 (Exceptional Talent) category or the previous Tier 1 (Post Study) category of the Immigration Rules to be issued with a registration certificate confirming that the holder has free access to the labour market and is therefore exempt from the requirement to obtain work authorisation if they intend to take employment; and
- we will make provision for Croatians who are studying here to be able, as is the case under the current Immigration Rules, to engage in part-time and vacation employment, and employment which forms part of a vocational course of study, without requiring work authorisation provided they have obtained a registration certificate from the UK Border Agency confirming that they are exercising a Treaty right as a student.

12. Work in a self-employed capacity will not be subject to work authorisation because the terms of the Accession Treaty do not permit the UK to restrict the exercise of rights of free movement for the purposes of establishment. Those exercising a right to reside as a self-employed person (or as a self-sufficient person) will, however, be subject to work authorisation in the event that they go on to engage in work in an employed capacity.

IN WHAT CIRCUMSTANCES WILL WORK AUTHORISATION BE GRANTED?

13. It is the Government's intention that the transitional restrictions applied to Croatian nationals after 1 July 2013 will provide Croatian nationals with the same degree of access to the labour market as they enjoyed under the Immigration Rules when the Treaty on Accession was signed.
14. It is therefore intended that, in the case of skilled and temporary workers, UK-based employers wishing to employ a Croatian national should continue to sponsor their employment through the existing arrangements under Tiers 2 and 5 of the Points Based System. Employers wishing to employ a Croatian national will therefore need to be licensed with the UK Border Agency as a Tier 2 or Tier 5 sponsor in the same way as they are now if they wish to issue a Certificate of Sponsorship to a non-EEA worker under these arrangements.
15. Croatian nationals will not, however, be subject to immigration control and will not therefore be required to apply for leave to enter or remain on the basis of the issuance of a Certificate of Sponsorship. Croatian nationals issued with a Certificate of Sponsorship by a licensed sponsor will instead be required to apply to the UK Border Agency for an accession worker registration certificate in the same way that Bulgarian and Romanian nationals are currently required to obtain a document where their employer has received authorisation of their employment under the pre-PBS work permit arrangements. Croatian nationals will also be able to apply for an accession worker registration certificate where they meet the criteria currently applied in respect of employment routes which currently sit outside the PBS (for example, under the existing provisions for employees of overseas businesses and domestic workers).

16. As noted above, we cannot apply transitional restrictions which are more restrictive in their effect than the restrictions applied to Croatians on the date that the Accession Treaty was signed. The criteria which must be met for an accession worker registration certificate to be issued will therefore be those which were applied to Croatian nationals under the Immigration Rules as they stood in December 2011, except where the Rules applied subsequently are less restrictive.
17. Croatian nationals filling skilled vacancies will therefore be able to qualify for an accession worker registration certificate where they are issued with a valid Certificate of Sponsorship under Tier 2 of the PBS. The issuance of an accession worker registration certificate will be subject to a Resident Labour Market Test, except where the worker is to be employed in an occupation on the Shortage Occupation List, where their salary exceeds £150,000 or where they have graduated in the UK. The skills threshold applied to Croatian nationals of the PBS will be NQF Level 4.
18. Croatian nationals applying for work authorisation will not be subject to the period requirement to spend a minimum period of twelve months outside the UK which is applied to Tier 2 applicants subject to immigration control where they have left the UK and their leave has expired, nor will they be subject to the requirement to hold a minimum level of funds applied to Tier 2 migrants subject to immigration control. They will, however, be subject to meet the English language requirements applied to Tier 2 migrants.
19. Certificates of Sponsorship issued to Croatian nationals will count against the annual Tier 2 General limit that currently applies to non-EEA nationals. However, Croatians will be given preference over third country nationals in the event that the limit is over-subscribed, such that no Croatians will be refused for this reason.
20. An accession worker registration certificate issued under these arrangements will specify the employment for which work authorisation has been granted and will remain valid for as long as the holder remains in that employment. As noted above, a Croatian national who completes an uninterrupted period of 12 months in authorised employment will cease to be subject to the work authorisation requirement and will be entitled (but not required), at that point, to apply for a registration certificate confirming that he or she has free access to the labour market.
21. On the timescales for the issuance of documents, the UK Border Agency's current service standard for issuance of documents under the restrictions applied to workers from Bulgaria and Romania is to deal with 95% of applications within six months. The UK Border Agency is, however, currently undertaking a review of all service standards across its temporary migration operations and, as part of this work, service standards for processing applications under transitional restrictions will be reviewed.
22. The Government does not currently intend to provide Croatian nationals with access to the quota-based schemes (the Seasonal Agricultural Workers Scheme and the Sectors Based Scheme) under which Bulgarian and Romanian nationals are currently permitted to engage in work at lower skill levels, and which are expected to be ended when the transitional restrictions on Bulgarian and Romanian nationals are lifted at the end of 2013. The Government has, however, asked the Migration Advisory Committee to report on the impact on the sectors covered by the schemes if no replacement arrangements are put in place and the Government will review its position in the light of the Committee's findings.

FAMILY MEMBERS

23. The family members of a Croatian national who is working in accordance with the work authorisation requirements will not themselves be subject to the work authorisation requirement. This mirrors the position under the Immigration Rules where the dependants of those admitted for the purpose of work are generally granted leave to remain on conditions which do not restrict employment.

SANCTIONS

24. As with the equivalent transitional restrictions applied to Bulgarian and Romanian nationals, there will be penalties for working in breach of the work authorisation requirement (the “employee offence”) and for employing a Croatian national in breach of the work authorisation requirement (the “employer offence”).
25. The employee offence will be subject to a maximum penalty, on conviction, of 3 months imprisonment or a fine not exceeding level 5 on the standard scale. It is also intended that, as with restrictions applied to Bulgarian and Romanian nationals, that a person’s liability to conviction can be discharged on the payment of a penalty of £1,000 to the Secretary of State.
26. The employer offence will be subject to a maximum penalty, on conviction, of 6 months imprisonment or a fine not exceeding level 5 on the standard scale. The Regulations will, however, additionally provide for the employer offence to be subject to a civil penalty equivalent to that for which Sections 15 to 23 of the Immigration, Asylum and Nationality Act 2006 provides in respect of the illegal employment of third country nationals.
27. There will in addition be an offence of using deception in order to obtain a registration certificate which will be subject to a maximum penalty, on conviction, of 3 months imprisonment or a fine not exceeding level 5 on the standard scale.

REVIEW

28. 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.



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