

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 11 December 2006 under section 3(2) of
the Immigration Act 1971*

*Ordered by The House of Commons to be printed
11 December 2006*

(This document is accompanied by an Explanatory Memorandum)

© Crown Copyright 2006

The text in this document (excluding any Royal Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Any queries relating to the copyright in this document should be addressed to The Licensing Division, HMSO, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ. Fax: 01603 723000 or e-mail: licensing@cabinet-office.x.gsi.gov.uk

STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the Rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC 329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cmnd 3953), 8 October 1998 (Cmnd 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cmnd 4851), 27 August 2001 (Cmnd 5253), 16 April 2002 (HC 735), 27 August 2002 (Cmnd 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cmnd 5829), 24 August 2003 (Cmnd 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC 523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September 2006 (Cm 6918) and 7 November 2006 (HC 1702).

The changes in the following paragraphs shall take effect on 1st January 2007.

1. In paragraph 89 (requirements for leave to enter as an “au pair”), in sub-paragraph (v) “Republic of Bulgaria” and “Romania” are deleted.
2. Paragraphs 211 to 221 (persons intending to establish themselves in business under provisions of EC Association Agreements – leave to enter and extension of stay) are deleted.
3. For paragraph 222 (indefinite leave to remain for a person established in business under provisions of an EC Association Agreement) there is substituted –

“222. Indefinite leave to remain may be granted, on application, to a person established in business provided he –

- (i) is a national of Bulgaria or Romania; and
- (ii) entered the United Kingdom with a valid United Kingdom entry clearance as a person intending to establish himself in business under the provisions of an EC Association Agreement; and
- (iii) was granted an extension of stay before 1st January 2007 in order to remain in business under the provisions of the Agreement; and
- (iv) established himself in business in the United Kingdom, spent a continuous period of 5 years in the United Kingdom in this capacity and is still so engaged; and
- (v) met the requirements of paragraph 222A throughout the period of 5 years; and
- (vi) submits audited accounts for the first 4 years of trading and management accounts for the 5th year.

222A. The requirements mentioned in paragraph 222(v) are that throughout the period of 5 years –

- (i) the applicant’s share of the profits of the business has been sufficient to maintain and accommodate himself and any dependants without recourse to employment (other than his work for the business) or to public funds; and
- (ii) he has not supplemented his business activities by taking or seeking employment in the United Kingdom (other than his work for the business); and
- (iii) he has satisfied the requirements in paragraph 222B or 222C.

222B. Where the applicant has established himself in a company in the United Kingdom which he effectively controls, the requirements for the purpose of paragraph 222A(iii) are that–

- (i) the applicant has been actively involved in the promotion and management of the company; and
- (ii) he has had a controlling interest in the company; and
- (iii) the company was registered in the United Kingdom and has been trading or providing services in the United Kingdom; and
- (iv) the company owned the assets of the business.

222C. Where the applicant has established himself as a sole trader or in a partnership in the United Kingdom, the requirements for the purpose of paragraph 222A(iii) are that—

- (i) the applicant has been actively involved in trading or providing services on his own account or in a partnership in the United Kingdom; and
- (ii) the applicant owned, or together with his partners owned, the assets of the business; and
- (iii) in the case of a partnership, the applicant's part in the business did not amount to disguised employment.”

4. After paragraph 223 there is inserted —

“223A. Notwithstanding paragraph 5, paragraphs 222 to 223 shall apply to a person who is entitled to remain in the United Kingdom by virtue of the provisions of the 2006 EEA Regulations.”

5. In Appendix 1 (visa requirements for the United Kingdom), in paragraph 1(a) “Bulgaria” and “Romania” are deleted.

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Fax orders 0870 600 5533

Order through the Parliamentary Hotline *Lo-call* 0845 7 023474

Email bookorders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders/General enquiries 020 7219 3890

Fax orders 020 7219 3866

Email bookshop@parliament.uk

Internet bookshop.parliament.uk

TSO@Blackwell and other Accredited Agents

ISBN 0-10-294410-5



9 780102 944105

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 11 DECEMBER 2006 (HC 130)**

1. Introduction

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

2. Description

- 2.1 This Statement of Changes in Immigration Rules contains three policy changes, all of which are technical amendments necessitated by the accession of Bulgaria and Romania to the European Union on 1 January 2007. The first change involves the removal of Bulgaria and Romania from the list of those countries whose nationals may submit applications under the *au pair* rules. The second change involves the deletion of the rules relating to leave to enter and limited leave to remain under the European Community Association Agreements with Bulgaria and Romania. The third change is that we are removing Bulgaria and Romania from the list of countries whose nationals require a visa to come to the United Kingdom. With effect from 1 January 2007, nationals of Bulgaria and Romania will have a right under European Community law to be admitted to the United Kingdom on production of their ID cards and passports, and will not require leave under the Rules.

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

- 3.1 None.

4. Legislative Background

- 4.1 The Immigration Rules are the Rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged “.. from time to time (and as soon as may be) lay before Parliament statements of the Rules, or any changes in the Rules, laid down by him as to the practice to be followed in the administration of this Act ..”.
- 4.2 This Statement of Changes in Immigration Rules will be laid on 11 December 2006. The changes will take effect on 1 January 2007.
- 4.3 This Statement of Changes in Immigration Rules was incorporated into a consolidated version of the Immigration Rules, which can be found under the ‘Laws & Policy’ page at: www.ind.homeoffice.gov.uk, where there are also copies of all the Statements of Changes in Immigration Rules issued since May 2003.

5. Extent

- 5.1 This Statement of Changes in Immigration Rules applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 Not applicable.

7. Policy background

- 7.1 All of these changes result from the imminent accession of Bulgaria and Romania to the European Union (EU).
- 7.2 Bulgaria and Romania will be joining the EU on 1 January 2007 at which time Bulgarian and Romanian nationals will be able to travel freely throughout the EU. We are therefore removing Bulgaria and Romania from the list of countries whose nationals will require a visa for the United Kingdom. On 1 January 2007 the visa regimes will cease to be applicable to nationals of these states.
- 7.3 For the same reason, we are removing Bulgaria and Romania from the list of those countries whose nationals may submit applications under the *au pair* rules. After accession Bulgarian and Romanian nationals who wish to work as *au pairs* will be able to enter the United Kingdom without leave but will be required to obtain authorisation to work in the United Kingdom under the Accession (Immigration and Worker Authorisation) Regulations 2006.
- 7.4 We are also deleting the immigration rules relating to leave to enter and limited leave to remain under the European Community Association Agreements (ECAA) with Bulgaria and Romania. These are transitional agreements between Bulgaria and Romania and the EU to facilitate those countries' accession to the EU, and to help them to prepare for it. They allow nationals of those countries to establish themselves in business in EU Member States, using immigration rules which are different to the ordinary rules for people intending to establish themselves in business. The agreements will lapse upon accession, and we are therefore deleting most of the immigration rules relating to them.
- 7.5 As a transitional provision, however, we are continuing the ECAA rules for grants of indefinite leave to remain (ILR), as the regulations applying to EU nationals (the Immigration (European Economic Area) Regulations 2006/1003) will not, on accession, provide the same rights to settlement as the ECAA rules for ILR. To acquire permanent residence under the 2006 Regulations Bulgarian and Romanian nationals will generally need to reside in the United Kingdom in accordance with the Regulations for five years after accession. Continuing the ECAA rules for ILR will mean that Bulgarian and Romanian nationals who have already established themselves in the United Kingdom before accession will be able to acquire an equivalent status to permanent residence (i.e. ILR) under the rules based in whole or in part on time already spent in the United Kingdom.

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 identifiable impact on the public sector.

9. Contact

- 9.1 Queries should be addressed to the Home Office's Immigration and Nationality Enquiry Bureau on telephone: 0870-6067766 or by e-mail: indpublicenquiries@ind.homeoffice.gsi.gov.uk