



Memorandum to the Foreign Affairs Committee

Post-Legislative Scrutiny of the European Union (Accessions) Act 2006

Presented to Parliament by the Secretary of State for Foreign Affairs
by Command of Her Majesty

December 2011



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MEMORANDUM TO THE FOREIGN AFFAIRS COMMITTEE: POST-LEGISLATIVE SCRUTINY OF THE EUROPEAN UNION (ACCESSIONS) ACT 2006

A. SUMMARY OF THE OBJECTIVES OF THE ACT

The European Union (Accessions) Act 2006 was framed to enact in UK legislation the accession of Romania and Bulgaria to the EU, signed at Luxembourg on 25th April 2005. It received Royal Assent on 16 February 2006.

It comprises three provisions:

1. **The objective of the first provision is to bring Romania and Bulgaria's EU Accession Treaty into UK law.** It inserts in section 1(2) of the European Communities Act 1972 (c.68) a reference to the EU Accession Treaty, and it approves this under the provisions of section 12 of the European Parliamentary Elections Act 2002 (c. 24) (ratification of treaties).
2. The objective of the second provision is to provide a power for the Secretary of State to make regulations implementing the **transitional arrangements concerning the free movement of Bulgarian and Romanian workers.** It achieves this in the following way:
 - *Subsection (1)* – allows for regulations to make provision concerning the entitlement of Bulgarian and Romanian nationals to enter or reside in the UK as workers.
 - *Subsection (2)* – states that such regulations may provide that an enactment relating to the rights of nationals of the European Economic Area (EEA) to enter or reside in the UK in order to work (the “specified enactment”), applies (with or without modifications) to nationals of Bulgaria and Romania; the general free movement rights of EEA nationals are currently implemented in the UK by the Immigration (European Economic Area) Regulations 2000 (SI 2000/2326) (as amended) and the transitional provision made in relation to workers from eight of the States that acceded to the EU in 2004 are set out in the Accession (Immigration and Worker Registration) Regulations 2004 (SI 2004/ 1219) (as amended);
 - *Subsections (3) and (4)* – provide that regulations under the section may, in particular, require Bulgarian and Romanian workers to be registered, require a fee to be paid in relation to such registration (or applications for registration) and make it an offence (subject to the limits in *subsection (4)*) for an employer to employ such a worker unless authorised to do so under the regulations;
 - *Subsection (5)* – allows the regulations under section 2 to include incidental, supplementary, transitional or consequential provisions and to make different provisions for different cases; this would, for example, allow different provision to be made in relation to different economic sectors;

- *Subsections (6) to (9)* - these subsections require regulations made under section 2 to follow the affirmative parliamentary procedure, which requires a draft of the regulations to be approved by both Houses of Parliament before they are made; if, however, regulations need to be made urgently (for example, to address serious disturbances to the UK labour market) regulations can be made and then approved by Parliament within 40 days (in computing the 40 day period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days, as provided for in section 7(1) of the Statutory Instruments Act 1946).
3. The objective of the third provision is to cite the short title of the Act as the **European Union (Accessions) Act 2006**.

B. IMPLEMENTATION

1. Section 2 of the Act provides a power to make regulations implementing the transitional arrangements concerning the free movement of Bulgarian and Romanian workers as set out in the Accession Treaty. The Accession Treaty provided that:
 - for the first two years after accession, Member States are required to apply national measures or bilateral agreements regulating the rights of nationals from Bulgaria and Romania to work in their territories;
 - from the third year, Member States may either grant nationals from Bulgaria and Romania the right to move and work freely in accordance with Community (now EU) law, or continue to apply national measures or bilateral agreements for a further three years (or 5 years, in exceptional circumstances).
 - from the fifth year, Member States may either grant nationals from Bulgaria and Romania the right to move and work freely in accordance with Community law, or continue to apply national measures or bilateral agreements for a further two years if their labour markets are seriously disturbed or at threat of serious disturbance.
2. The Accession Treaty further provides that any Member State that has granted the right of free movement in accordance with Community (now EU) law during the 7 year transitional period can request that the Commission suspend in whole or in part the application of that law if the Member State undergoes or foresees disturbances of its labour market which could seriously threaten the standard of living or level of employment in a given region or occupation.
3. The European Union (Accessions) Act 2006, provided an order making power for **implementation** of the provisions through secondary legislation, namely the **Accession (Immigration and Worker Authorisation) Regulations 2006**.

C. SECONDARY LEGISLATION

1. The Home Office brought forward the **Accession (Immigration and Worker Authorisation) Regulations 2006**, on 13 December 2006, which entered into force on 1 January 2007, when Romania and Bulgaria acceded. They established a worker authorisation registration scheme restricting access to the United Kingdom labour market by Bulgarian and Romanian nationals during an initial five year transitional period, in accordance with the maximum 7-year period allowed for under Annexes VI and VII of the Act of Accession and made consequential transitional provision in relation to the exercise of the free movement rights enjoyed by nationals from the A2 states on accession.

2. The regulations provide a legislative base for Bulgarian and Romanian nationals wishing to reside and work in the United Kingdom following their accession:

Part 1 contains the general provisions. Regulation 2, in particular, defines “accession State national subject to worker authorisation” – Bulgarian and Romanian nationals falling within this definition are required to obtain permission to work in the United Kingdom. Regulations 2(2) to 2(13) defined those who would be exempt, for example, those with permission to work prior to accession.

Part 2 of the Regulations provide that a Bulgarian or Romanian national subject to the requirement to obtain permission to work would only enjoy a right to reside on the basis of his or her worker status if he or she is in possession of the required documentation (regulation 6). It also makes provision, additional to that set out in the Immigration (European Economic Area) Regulations 2006 for the issuance of a registration certificate to a Bulgarian or Romanian national.

Part 3 of the Regulations sets out the terms on which a worker requiring authorisation could obtain such authorisation (regulations 9 to 11 and Schedule 1). The effect of the Regulations is that those Bulgarian and Romanian nationals subject to the worker authorisation requirement would be required to obtain an accession worker card, unless they already had been granted leave under Immigration Act 1971 for this purpose or had been issued with a work card under the Seasonal Agricultural Workers Scheme. Regulation 12 creates a new offence of employing a Bulgarian or Romanian national who did not have the authority to work. Regulation 13 makes it an offence for a Bulgarian or Romanian national to take employment without authority. Regulation 14 makes it an offence to obtain or seek to obtain an accession worker card by deception.

D. LEGAL ISSUES

1. The Accession (Immigration and Worker Authorisation) Regulations 2006 in the event made it an offence both to employ a person in breach of the worker authorisation requirement and to be employed in breach of that requirement. The latter provision was not covered by the enabling power in the European Union (Accessions) Act 2006. Consequently, the 2006 Regulations had to be made using both the 2006 Act and Section 2(2) of the European Communities Act 1972.

E. OTHER REVIEWS

1. The Minister of State for Immigration confirmed on 23 November 2011 by written ministerial statement that the restrictions currently applied to Bulgarian and Romanian nationals' employment in the United Kingdom will continue until the end of 2013. Under EU Law, the current restrictions cannot continue beyond the end of 2013 and will therefore be lifted at that point.

The WMS went on to state that "The government is concerned to ensure that migration to the UK does not have adverse impacts on the employment opportunities of the domestic labour force at the current time. Because of the uncertainty of any effects, the government is firmly of the view that transitional measures are required to mitigate the impacts of labour migration when countries newly accede to the EU.

The transitional restrictions applied to Bulgarian and Romanian workers have been in force since 1 January 2007. They restrict Bulgarian and Romanian nationals to employment that is either skilled or is in sectors where there continues to be a shortage of labour, and have therefore helped to ensure that migration from those countries delivers economic benefits to the UK.

Under paragraph 5 of Annexes VI and VII of the treaty concerning the accession of Bulgaria and Romania to the EU, the UK may extend these restrictions to the end of 2013 where there is a serious disturbance to its labour market or threat thereof. We have approached the question of whether there is such a disturbance or the risk of one carefully. Economic events of recent years have inevitably impacted upon labour market conditions in the UK but the labour market has demonstrated a high degree of resilience, particularly in terms of levels of employment, during and since the recession. However, labour market conditions, and the extent to which they are affected by migration, are very uncertain in the current economic circumstances.

It is against that background that I have sought advice from the independent Migration Advisory Committee (MAC) on the labour market grounds for extending the restrictions. The MAC findings, published on 4 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 while migration flows from Bulgaria and Romania have been relatively low, the number of Bulgarians and Romanians resident in the UK has nevertheless increased substantially since 1 January 2007 and 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 suggested that the labour market impact of these outcomes would be aggravated by the likelihood that such 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.

The government has decided that, given its own assessment of the labour market and the MAC findings, retaining the current restrictions is a proportionate means of addressing any disturbance or threat. The restrictions will therefore continue in their current form until the end of 2013. I am notifying the European Commission of this decision and I am taking the necessary legislative action to extend the period of application of the current regulations.

The annual quota for the seasonal agricultural workers scheme (SAWS) will continue at 21,250 places for 2012 and 2013 and the annual quota for the sectors based scheme (SBS) will continue at 3,500 places for 2012 and 2013.”

F. PRELIMINARY ASSESSMENT OF THE ACT

1. The objectives of the Act were outlined in Section A. above. The policy background was to create sufficient enabling legislation, within the limits set by the EU Accession Treaty, to allow the framing of regulations that would manage the flow of Romanian and Bulgarian workers to the UK flexibly (e.g. sector-specific and open to review) and take robust account of the domestic labour market. They also had to be framed so as to enshrine lessons learned from earlier accessions to the EU, and to address serious concerns which had been raised in Parliament about those accessions. As further context, we also note the continued parliamentary scrutiny of the post-accession Co-operation and Verification Mechanism for Romania and Bulgaria.

2. On the objectives of the Act:

The objective of the first provision is to bring Romania and Bulgaria’s EU Accession Treaty into UK law.

3. This objective was fully achieved on the Act gaining Royal Assent.

The objective of the second provision is to provide the power for the Secretary of State to make regulations implementing the transitional arrangements concerning the free movement of Bulgarian and Romanian workers.

4. In our assessment, this objective was achieved. An enabling framework was created which was consistent with the provisions of the Accession Treaty, and which gave the Home Secretary necessary powers to bring forward the secondary legislative regulations which came into force on 1 January 1997 namely, the powers to restrict, monitor and sanction (if not legitimate) the flow of Romanian and Bulgarian workers into the United Kingdom. Through the provision to review the implementation after five years, taking account of the evidence provided by the independent Migration Advisory Council, these restrictions were framed in such a way as to safeguard the needs of the UK labour market, thus taking into account experience of previous enlargements of the European Union. The Act and secondary regulations provided for the option of either ceasing the restrictions if this had been in the interest of the

domestic labour market, or, as has transpired, of maintaining the restrictions up to the limit of the transitional period consistent with the Accession Treaty.

5. In the broader context of looking forward from the experiences of the accession of Romania and Bulgaria, Chapter 23 - covering judiciary and Fundamental Rights - was introduced into pre-accession negotiations, to help promote judicial reform and tackle corruption, and to ensure that these issues are properly addressed before accession. The demands which were rightly placed on Croatia were greater than those placed on any previous applicant, and the same rigour will be applied to all future applicants. The General Affairs Council on 5 December 2011 welcomed a Commission proposal that in the future, the Chapters on Judiciary and Fundamental Rights, and Justice, Freedom and Security will be tackled early in the accession process, to allow the maximum time to establish the necessary legislation, institutions and solid track-records of implementation before the negotiations are closed.

The objective of the third provision is to cite the short title of the Act as the European Union (Accessions) Act 2006.

6. This was achieved.



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