

GUERNSEY STATUTORY INSTRUMENT

2006 No. 56

GREFFE
ROYAL COURT

29 DEC 2006

GUERNSEY

THE IMMIGRATION (ACCESSION) (WORKERS FROM BULGARIA AND ROMANIA) (GUERNSEY) RULES 2006

Made: 27th December 2006

Coming into force: 1st January 2007

Laid before the States:

THE HOME DEPARTMENT, in exercise of the powers conferred upon it by section 3(2) of the Immigration Act 1971 and section 7(2) of the Immigration Act 1988 as extended to the Bailiwick of Guernsey by the Immigration (Guernsey) Order 1993 hereby makes the following rules relating to nationals of Bulgaria and Romania:-

Interpretation

1. — (1) In these Rules—

- (a) **“accession period”** means the period beginning on 1st January 2007 and ending on 31st December 2011;
- (b) **“accession State national subject to worker authorisation”** has the meaning given in rule 2;
- (c) **“accession worker authorisation document”** shall be interpreted in accordance with rule 5(2);
- (d) **“authorised category of employment”** means a category of employment specified in the first column of the table in the Schedule ;
- (e) **“EEA State”** means—
 - (i) a member State, other than the United Kingdom;
 - (ii) Norway, Iceland or Liechtenstein;
 - (iii) Switzerland;
- (f) **“employer”** means, in relation to a worker, the person who directly pays the wage or salary of that worker;

- (g) **“family member”** in relation to an Accession State national subject to worker authorisation means;
- (a) his spouse
 - (b) a descendant of his or his spouse who is under 21 years of age or is their dependant; and
 - (c) a dependent relative in his ascending line or that of his spouse.
- (h) **“Guernsey”** includes Herm and Jethou;
- (i) **“Immigration Act 1971”, “Immigration Act 1988” and “Immigration and Asylum Act 1999”** shall mean those Acts as extended to the Bailiwick of Guernsey by the Immigration (Guernsey) Order 1993, and any reference to any provision of those Acts is (unless the context requires otherwise) a reference thereto as so extended;
- (j) **“public funds”** means any benefit paid by the States of Guernsey or any department thereof to any person who has not paid any contribution towards the receipt of such benefit;
- (k) **“Sark”** includes the dependencies of Sark;
- (l) **“Self-employed person”** means a person who establishes himself in order to pursue activity as a self employed person within the meaning of article 43 of the Treaty establishing the European Community.
- (m) **“self-sufficient person”** means a person who -
- (i) has sufficient resources to avoid his becoming a charge on public funds; and
 - (ii) is covered by sickness insurance in respect of all risks in the Bailiwick of Guernsey; and
- (n) **“spouse”** does not include a party to a marriage of convenience;
- (o) **“worker”** means a worker within the meaning of Article 39 of the Treaty establishing the European Community, and **“work”** and **“working”** shall be construed accordingly.
- (p) **“work permit”** has the meaning given in Section 33(1) of the Immigration Act 1971.

- (2) In these Rules unless the context otherwise requires -
- (a) words importing the masculine gender include the feminine;
 - (b) a reference to a numbered or lettered rule, paragraph or sub-paragraph is a reference to the rule, paragraph or sub-paragraph of these Rules which is so numbered or lettered; and
 - (c) a reference to any enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.
- (3) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these rules as it applies to the interpretation of an enactment in force in Guernsey.

“Accession State national subject to worker authorisation”

- 2.—(1) Subject to the following paragraphs “accession State national subject to worker authorisation” means a national of Bulgaria or Romania .
- (2) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation if he is settled in the Bailiwick of Guernsey
- (3) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation if he has leave to enter or remain in the Bailiwick of Guernsey under the Immigration Act 1971 (**otherwise than by virtue of an order under the provisions of section 7 of the Immigration Act 1988**) and that leave is not subject to any condition restricting his employment.
- (4) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation if he is a self employed person.
- (5) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is also a national of—
- (a) the United Kingdom; or
 - (b) an EEA State, other than Bulgaria or Romania.
- (6) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation during any period in which he is the spouse of a British citizen or of a person settled in the Bailiwick of Guernsey.
- (7) A national of Bulgaria or Romania is not an accession State national subject to worker authorisation if he is a self sufficient person
- (8) A national of Bulgaria or Romania who legally works in the Bailiwick of Guernsey without interruption for a period of 12 months falling partly or wholly after

31st December 2006 shall cease to be an accession State national subject to worker authorisation at the end of that period of 12 months.

(9) In these rules the reference to a person settled in the Bailiwick of Guernsey shall be interpreted in accordance with section 33(2A) of the Immigration Act 1971.

Residence in the Bailiwick of Guernsey of an accession State national subject to worker authorisation

3.— (1) An accession State national subject to worker authorisation shall, during the accession period, only be entitled to reside in the Bailiwick of Guernsey if he holds a valid accession worker authorisation document issued to him by the Home Department and:

- (a) he complies with the provisions of any legislation regulating employment in force in relation to that part of the Bailiwick within which he is working or is otherwise employed and in particular (without derogating from the generality of that requirement) -
 - (i) in Guernsey, he holds an appropriate right to work document under the provisions of the Right to Work (Limitation and Proof) (Guernsey) Law, 1990; and
 - (ii) in Alderney, he complies with the provisions of the Employment Permits (Alderney) Law, 1975; and
- (b) he complies with the provisions of any legislation controlling the occupation of housing in force in relation to that part of the Bailiwick within which he is residing and in particular (without derogating from the generality of that requirement) -
 - (i) in Guernsey, he complies with the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1994; and
 - (ii) in Sark, he complies with the provisions of the Housing (Temporary Provisions) (Sark) Law, 1976.

(2) A family member of an accession State national subject to worker authorisation who is residing in the Bailiwick of Guernsey may on application be given notice in writing showing that he may remain in the Bailiwick of Guernsey for the duration of the said accession State national's accession worker authorisation document provided that:

- (a) if he is employed, he complies with the provisions of any legislation regulating employment in force in relation to that part of the Bailiwick within which he is employed and in

particular (without derogating from the generality of that requirement) -

- (i) in Guernsey, he holds an appropriate right to work document under the provisions of the Right to Work (Limitation and Proof) (Guernsey) Law, 1990; and
 - (ii) in Alderney, he complies with the provisions of the Employment Permits (Alderney) Law, 1975; and
- (b) he complies with the provisions of any legislation controlling the occupation of housing in force in relation to that part of the Bailiwick within which he is residing and in particular (without derogating from the generality of that requirement) -
- (i) in Guernsey, he complies with the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1994; and
 - (ii) in Sark, he complies with the provisions of the Housing (Temporary Provisions) (Sark) Law, 1976.

Notice in writing may take the form of an endorsement in that person's passport.

Residence in the Bailiwick of Guernsey of a Bulgarian or Romanian national who is not an accession State national subject to worker authorisation

4.—(1) A Bulgarian or Romanian national who is not an accession State national subject to worker authorisation and who is residing in the Bailiwick of Guernsey may on application be given notice in writing showing that he may remain in the Bailiwick of Guernsey provided that:

- (a) if he is employed, he complies with the provisions of any legislation regulating employment in force in relation to that part of the Bailiwick within which he is employed and in particular (without derogating from the generality of that requirement) -
 - (i) in Guernsey, he holds an appropriate right to work document under the provisions of the Right to Work (Limitation and Proof) (Guernsey) Law, 1990; and
 - (ii) in Alderney, he complies with the provisions of the Employment Permits (Alderney) Law, 1975; and
- (b) he complies with the provisions of any legislation controlling the occupation of housing in force in relation to that part of the Bailiwick within which he is residing and in particular (without derogating from the generality of that requirement) -

- (i) in Guernsey, he complies with the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1994; and
- (ii) in Sark, he complies with the provisions of the Housing (Temporary Provisions) (Sark) Law, 1976.

Notice in writing may take the form of an endorsement in that person's passport.

(2) A family member of a Bulgarian or Romanian national who is not accession State national subject to worker authorisation who is residing in the Bailiwick of Guernsey may on application be given notice in writing showing that he may remain in the Bailiwick of Guernsey for the same period as the said Bulgarian or Romanian national provided that:

- (a) if he is employed, he complies with the provisions of any legislation regulating employment in force in relation to that part of the Bailiwick within which he is employed and in particular (without derogating from the generality of that requirement) -
 - (i) in Guernsey, he holds an appropriate right to work document under the provisions of the Right to Work (Limitation and Proof) (Guernsey) Law, 1990; and
 - (ii) in Alderney, he complies with the provisions of the Employment Permits (Alderney) Law, 1975; and
- (b) he complies with the provisions of any legislation controlling the occupation of housing in force in relation to that part of the Bailiwick within which he is residing and in particular (without derogating from the generality of that requirement) -
 - (i) in Guernsey, he complies with the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1994; and
 - (ii) in Sark, he complies with the provisions of the Housing (Temporary Provisions) (Sark) Law, 1976.

Notice in writing may take the form of an endorsement in that person's passport.

Requirement for an accession State national subject to worker authorisation to be authorised to work

5.—(1) An accession State national subject to worker authorisation may only work in the Bailiwick of Guernsey during the accession period if he holds an accession worker authorisation document and is working in accordance with -

- (a) the conditions set out in that document; and
- (b) the provisions of these Rules.

(2) For the purpose of these Rules, an accession worker authorisation document is—

- (a) a passport or other travel document endorsed before 1st January 2007 to show that the holder has leave to enter or remain in the Bailiwick of Guernsey under the Immigration Act 1971, subject to a condition restricting his employment in the Bailiwick of Guernsey to a particular employer or category of employment;
- (b) a work permit issued by the Home Department;
- (c) a letter issued by or on behalf of the Home Department confirming employment in an authorised category of employment set out in paragraph 2, 3 or 4 in the table in the Schedule.

(3) But a document shall cease to be treated as an accession worker authorisation document under paragraph (2) above—

- (a) in the case of a document mentioned in paragraph (2)(a), at the end of the period for which leave to enter or remain is given;
- (b) in the case of a document mentioned in paragraph (2)(b), on the expiry of the work permit;
- (c) in the case of a document mentioned in paragraph (2)(c), at the end of the period specified in the letter.

(4) For the purpose of this rule the reference to a travel document other than a passport is a reference to a document which relates to a national of Bulgaria or Romania and which is designed to serve the same purpose as a passport.

Application for an accession worker authorisation document

6.—(1) An application for an accession worker authorisation document consisting of a document specified in rule 5(2)(b) or (c) (work permit or letter issued by Home Department) may be made only by a potential employer of an accession State national subject to worker authorisation who wishes to work in the Bailiwick of Guernsey and only if the work concerned falls within an authorised category of employment.

(2) The application shall be in writing and shall be made to the Immigration and Nationality Division of the Home Department.

(3) The application shall be accompanied by the accession State national's national identity card or passport and such other information and documents, authenticated in such manner, as the Department may require.

Issuing an accession worker authorisation document

7. —(1) The Home Department shall not issue an accession worker authorisation document if the accession State national subject to worker authorisation is subject to removal under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 or section 10 of the Immigration and Asylum Act 1999.

(2) An accession worker authorisation document shall expire if the holder of the document ceases working for the employer specified in the application.

Unauthorised working by accession State national

8.— For the avoidance of doubt, and for the purposes of section 7 of the Immigration Act 1988, an accession State national subject to worker authorisation who works in the Bailiwick of Guernsey during the accession period shall be guilty of an offence under Section 24 of the Immigration Act 1971 as if he required, and had failed to observe a condition of, leave to enter if—

- (a) he does not hold an accession worker authorisation document; or
- (b) he is working in breach of -
 - (i) the conditions set out in his accession worker authorisation document, or
 - (ii) the provisions of these Rules.

Deception

9.— A person is guilty of an offence under section 26 of the Immigration Act 1971 if, for the purpose of obtaining an accession worker authorisation document or in connection with an application for such a document, or otherwise for the purposes of these Rules -

- (a) he makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) he dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular;
- (c) he produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or

- (d) he dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular.

Commencement.

10. — These Rules shall come into force on 1st January 2007.

Dated this twenty-seventh day of December 2006



DEPUTY F W QUIN
Deputy Minister of the States Home Department
For and on behalf of the Home Department

SCHEDULE

Rules 5(2)(c) and 6(1)

Authorised categories of employment and relevant requirements

<i>Authorised category of employment</i>	<i>Relevant requirements in relation to authorised category of employment</i>
1. Work Permit Employment	<ul style="list-style-type: none"> (1) The employment falls within Home Department Policy; and (2) the worker is not of an age which puts him outside the limits for employment; and (3) he is capable of undertaking the employment specified in the work permit; and (4) he does not intend to take employment except as specified in his work permit; and (5) he is able to maintain and accommodate himself and any dependants adequately without recourse to public funds
2. Au pair placement	<p>The accession State national subject to worker authorisation -</p> <ul style="list-style-type: none"> (1) has and intends to take up an offer of an au pair placement; and (2) is aged between 17 to 27 inclusive; and (3) is unmarried; and (4) is without dependants.
3. Minister of religion, missionary or member of a religious order	<p>The accession State national subject to worker authorisation -</p> <ul style="list-style-type: none"> (1) if a minister of religion— <ul style="list-style-type: none"> (a) has either been working for at least one year as a minister of religion in any of the five years immediately prior to the date on which the application for the worker accession card is made or, where ordination is prescribed by a religious faith as the sole means of entering the ministry, has been ordained as a minister of religion following at least one year's full time or two years' part time training for the ministry; and (b) holds an International English Language Testing System Certificate issued to him to certify that he has achieved level 4 competence in spoken English, and the Certificate is dated not more than two years prior

	<p>to the date on which the application for an accession worker card is made;</p> <p>(2) if a missionary, has been trained as a missionary or has worked as a missionary and is being sent or has been sent to the Bailiwick of Guernsey by an overseas organisation;</p> <p>(3) if a member of a religious order, is living or coming to live in a community maintained by the religious order of which he is a member and, if intending to teach, does not intend to do so save at an establishment maintained by his order; and</p> <p>(4) intends to work in the Bailiwick of Guernsey as a minister of religion, missionary or for the religious order of which he is a member.</p>
<p>4. Teacher or language assistant</p>	<p>The accession State national subject to worker authorisation intends to work in an educational establishment in the Bailiwick of Guernsey under an exchange scheme approved by the Education Department.</p>

In this Schedule—

- (a) **“au pair placement”** means an arrangement whereby a young person—
- (i) comes to the Bailiwick of Guernsey for the purpose of learning English;
 - (ii) lives for a time as a member of an English speaking family with appropriate opportunities for study; and
 - (iii) helps in the home for a maximum of 5 hours per day in return for an allowance and with two free days per week;
- (b) **“Home Department Policy”** means the policy for the time being implemented by that Department in relation to the classes or descriptions of employment which are able to qualify a worker for a work permit;
- (c) **“member of a religious order”** means a person who lives in a community run by that order;
- (d) **“minister of religion”** means a religious functionary whose main regular duties comprise the leading of a congregation in performing the rites and rituals of the faith and in preaching the essentials of the creed;

(e) **“missionary”** means a person who is directly engaged in spreading a religious doctrine and whose work is not in essence administrative or clerical.

EXPLANATORY NOTE
(This note is not part of the Rules)

These Rules make provision for regulating access to the Bailiwick of Guernsey's labour market of workers who are nationals of Bulgaria or Romania on the accession of those nations to the European Union on 1st January 2007. The Rules have been made in the light of the United Kingdom's derogation from the usual position under European Community law by regulating access by nationals of those nations to its labour market. This derogation is provided for by the Accession Treaty for Bulgaria and Romania (signed in Luxembourg on 25th April 2005) and can be applied for a transitional period of five years (that is from 1st January 2007 to 31st December 2011)

Rules 1 and 2 contain general provisions and definitions of expressions applicable to the Rules.

Under Rule 3 a worker who is an "Accession State national subject to worker authorisation" will only be able to reside in the Bailiwick of Guernsey if he or she holds "accession worker authorisation document" which includes, amongst other things, a work permit issued by the Home Department.

Rule 4 deals with Bulgarian and Romanian nationals who do not fall to be treated under Rule 3 but who may reside in the Bailiwick.

Rules 3 and 4 both require compliance with provisions of employment or control of occupation of housing legislation in force in the part of the Bailiwick within which they may be residing.

Rule 5 provides that an accession State national subject to worker authorisation is only authorised to work in the Bailiwick if he or she holds an accession worker authorisation document and is working in accordance with the conditions set out in the document.

Rules 6 and 7 sets out procedure for the issuing of an accession authorisation document.

Rules 8 and 9 deal with offences