

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3566 of 16th November, 2006

B. 33/06

BILL

FOR

AN ORDINANCE to amend the Immigration Control Ordinance in connection with the accession of the Republic of Bulgaria and Romania to the European Union.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Ordinance may be cited as the Immigration Control (Bulgaria and Romania) (Amendment) Ordinance 2006.

(2) This Ordinance comes into operation on 1 January 2007.

Amendment of the Immigration Control Ordinance.

2. The Immigration Control Ordinance is amended as follows—

(a) for section 46A substitute—

“Central and Eastern European States (including Bulgaria and Romania).

46A.(1) This section applies during the transitional period and, for the purpose of this section, “the transitional period” is—

(a) in respect of relevant accession State workers—

(i) 1 May 2004 to 30 April 2009; or

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- (ii) such other date as the Government provides in rules made under this section;
 - (b) in respect of Bulgarian or Romanian transitional period workers–
 - (i) 1 January 2007 to 31 December 2011; or
 - (ii) such other date as the Government provides in rules made under this section.
- (2) For the purpose of this section–
- “Bulgarian or Romanian transitional period worker” means a citizen of Bulgaria or Romania who is legally working in Gibraltar but is not a qualified person;
- “legal employment” means employment under a work permit issued under the Employment Regulations 2004;
- “relevant accession state” means the Czech Republic, the Republic of Estonia, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, the Slovak Republic, or the Republic of Slovenia; and
- “relevant accession state worker” means a citizen of a relevant accession state who is legally working in Gibraltar but is not a qualified person.
- (3) During the transitional period “qualified person” (as defined in section 43)–
- (a) shall include a citizen of a relevant accession state, Bulgaria or Romania who undertakes in Gibraltar an activity set out in section 43(1) (b) to (h);
 - (b) shall not include a citizen of a relevant accession state, Bulgaria or Romania who undertakes in Gibraltar the activities of–

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- (i) a posted worker within the meaning of Article 1 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services; or
 - (ii) subject to subsection (4), a worker.
- (4) During the transitional period a worker who is a citizen of a relevant accession state, Bulgaria or Romania shall be a qualified person (as defined in section 43) if–
 - (a) he has been in legal employment in Gibraltar for an uninterrupted period of at least 12 months; for the purposes of this paragraph a person shall be treated as having been in legal employment in Gibraltar without interruption for a period of 12 months if he was legally working in Gibraltar at the beginning and end of that period and any intervening periods in which he was not working in Gibraltar do not, in total, exceed 30 days; and
 - (b) that period of legal employment commenced before or during the transitional period.
- (5) Subsection (4) shall not apply if the person voluntarily leaves the labour market of Gibraltar during the transitional period.
- (6) During the transitional period a family member of a relevant accession state worker shall have the right of residence in Gibraltar during the worker’s legal residence in Gibraltar.
- (7) A relevant accession state worker or a Bulgarian or Romanian transitional period worker and his family members–
 - (a) shall be issued with a residence permit under section 18; and
 - (b) shall not be issued with a residence permit under section 42.”; and

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- (b) in Schedule 1–
- (i) insert, after the heading–
- “States Party to the EEA Agreement include those states listed in this schedule as European Union States and those listed as European Free Trade Area (“EFTA”) States.”;
- (ii) insert, after “The Kingdom of Belgium”–
- “The Republic of Bulgaria”; and
- (iii) insert, after “The Portuguese Republic”–
- “Romania”.

EXPLANATORY MEMORANDUM

Bulgaria and Romania accede to the European Union on 1st January 2007. This Bill thus amends the Immigration Control Ordinance in order to –

1. provide for citizens of Bulgaria and Romania to be treated, for immigration purposes, as European Union citizens subject to the limitations contained in the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union; and
2. clarify the wording in schedule 1 to the Immigration Control Ordinance to make clear that the list of EEA States includes both those States listed as European Union States and those listed as EFTA States.

Following the 1st January 2007 in relation to immigration, Bulgarians and Romanians are to be treated in the same manner as other European Economic Area nationals in respect of entry to Gibraltar and engaging in self-employment. However Gibraltar has chosen to apply the restrictions on Bulgarian and Romanian workers as permitted by the Protocol during the

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transitional period – 1st January 2007 until 31 December 2011. During this transitional period–

- Bulgarians and Romanians may only work in Gibraltar under a work permit; save that, where they have been in work permit employment for one year, they are then free to take employment without a work permit;
- the spouses and children of Bulgarians and Romanians in work permit employment in Gibraltar may work without a work permit if a) they were resident in Gibraltar on 1st January 2007 and the worker has a work permit for over 12 months or b) if, they have resided in Gibraltar for 18 months, or reside in Gibraltar after 31 December 2009 (which ever occurs first).

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