Draft Regulations laid before Parliament under section 5(1) of the European Union (Croatian Accession and Irish Protocol) Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

IMMIGRATION

The Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013

Made - - - -	*2013*
Coming into force - -	*1st July 2013*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 4 of the European Union (Croatian Accession and Irish Protocol) Act 2013(**1**).

In accordance with section 5(1) of that Act, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

PART 1

INTERPRETATION ETC

Citation, commencement, interpretation and consequential amendments

1.—(1) These Regulations may be cited as the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 and come into force on 1st July 2013.

(2) In these Regulations—

"the 1971 Act" means the Immigration Act 1971(**2**);

"the 2006 Act" means the Immigration, Asylum and Nationality Act 2006(**3**);

"accession period" means the period beginning with 1st July 2013 and ending with 30th June 2018;

"accession State national subject to worker authorisation" has the meaning given in regulation 2;

"accession worker authorisation document" has the meaning given in regulation 8(2);

(**1**) 2013 c.5.
(**2**) 1971 c.77.
(**3**) 2006 c.13.

"authorised category of employment" means—

(a) employment for which the applicant has been issued by a sponsor with a valid certificate of sponsorship under Tier 2 or Tier 5 of the Points-Based System; or

(b) employment as—

(i) a representative of an overseas business;

(ii) a postgraduate doctor or dentist; or

(iii) a domestic worker in a private household;

"certificate of sponsorship" has the meaning given in paragraph 6 of the immigration rules, except that the reference to an application or potential application for entry clearance or leave to enter or remain as a Tier 2 migrant or a Tier 5 migrant is to be read as including a reference to an application or potential application for a worker authorisation registration certificate;

"certificate of sponsorship checking service" has the meaning given in paragraph 6 of the immigration rules, except that the reference to an application or potential application for entry clearance or leave to enter or remain as a Tier 2 migrant or a Tier 5 migrant is to be read as including a reference to an application or potential application for a worker authorisation registration certificate;

"civil partner" does not include a party to a civil partnership of convenience;

"EEA registration certificate" means a certificate issued in accordance with regulation 16 of the EEA Regulations;

"the EEA Regulations" means the Immigration (European Economic Area) Regulations 2006(**4**);

"EEA State" excludes the United Kingdom and includes Switzerland;

"employer" means, in relation to a worker, the person who directly pays the wage or salary of that worker, and "employ", "employment" and "employs" shall be construed accordingly;

"the EU2 Regulations" means the Accession (Immigration and Worker Authorisation) Regulations 2006(**5**);

"extended family member" has the meaning given in regulation 8 of the EEA Regulations;

"family member" has the meaning given in regulation 7 of the EEA Regulations;

"highly skilled person" has the meaning given in regulation 3;

"immigration rules" means the rules laid down as mentioned in section 3(2) of the 1971 Act applying (except for in the definition of "relevant requirements") on 1st July 2013(**6**);

"Points-Based System" means the system established under Part 6A of the immigration rules;

"relevant requirements" means, in relation to an authorised category of employment, the requirements which, subject to any necessary modifications, a person in that category of employment was obliged to meet under the immigration rules in force on 9th December 2011 in order to obtain entry clearance or leave to enter or remain in the United Kingdom and which are set out in the relevant statement;

"relevant statement" means the statement entitled "the Statement of relevant requirements" dated May 2013 and published by the Secretary of State(**7**);

(**4**) S.I. 2006/1003, amended by S.I. 2006/3317, 2009/1117, 2010/21, 1593, 2011/544, 1247, 2012/1547, 1809 and 2560.
(**5**) S.I. 2006/3317, amended by S.I. 2007/475, 3012, 3224, 2009/2426, 2748, 2010/1836, 2011/2816 and 2012/1809.
(**6**) Immigration rules H.C. 395, laid before Parliament on 23 May 1994 (as amended).
(**7**) The relevant statement is published by the Home Office at: http://www.ukba.homeoffice.gov.uk/ and copies can be obtained through the Direct Communications Unit, Home Office, 2 Marsham Street, London, SW1P 4DF (email: public.enquiries@homeoffice.gsi.gov.uk).

"right to reside" shall be interpreted in accordance with the EEA Regulations and "entitled to reside" and "right of residence" shall be construed accordingly;

"sponsor" means the holder of a sponsor licence(**8**);

"sponsor licence" has the meaning given in paragraph 6 of the immigration rules;

"spouse" does not include a party to a marriage of convenience;

"student" has the meaning given in regulation 4(1)(d) of the EEA Regulations;

"Tier 2" and "Tier 5" shall be construed in accordance in paragraph 6 of the immigration rules, except that the reference to the grant of leave is to be read as including a reference to the issuing of a worker authorisation registration certificate;

"unmarried or same sex partner" means a person who is in a durable relationship with another person;

"work" and "working" shall be construed in accordance with the meaning of "worker"(**9**); and

"worker authorisation registration certificate" means a certificate issued in accordance with regulation 10 of these Regulations.

(3) The Schedule (consequential amendments) shall have effect.

"Accession State national subject to worker authorisation"

2.—(1) Subject to the following paragraphs of this regulation, other than where these Regulations expressly refer to an accession State national subject to worker authorisation within the meaning of regulation 2 of the EU2 Regulations, in these Regulations "accession State national subject to worker authorisation" means a Croatian national.

(2) A Croatian national is not an accession State national subject to worker authorisation if, on 30th June 2013, he had leave to enter or remain in the United Kingdom under the 1971 Act that was not subject to any condition restricting his employment, or he is given such leave after that date.

(3) A Croatian national is not an accession State national subject to worker authorisation if he was legally working in the United Kingdom on 30th June 2013 and had been legally working in the United Kingdom without interruption throughout the preceding period of 12 months ending on that date.

(4) A Croatian national who legally works in the United Kingdom without interruption for a period of 12 months falling partly or wholly after 30th June 2013 ceases to be an accession State national subject to worker authorisation at the end of that period of 12 months.

(5) For the purposes of paragraphs (3) and (4) of this regulation—

(a) a person working in the United Kingdom during a period falling before 1st July 2013 was legally working in the United Kingdom during that period if—

(i) he had leave to enter or remain in the United Kingdom under the 1971 Act for that period, that leave allowed him to work in the United Kingdom, and he was working in accordance with any condition of that leave restricting his employment;

(ii) he was exempt from the provisions of the 1971 Act by virtue of section 8(2) or (3) of that Act (persons exempted by order or membership of diplomatic mission); or

(iii) he was entitled to reside in the United Kingdom for that period under the EEA Regulations without the requirement for such leave;

(b) a person working in the United Kingdom on or after 1st July 2013 is legally working in the United Kingdom during any period in which he—

(**8**) The requirements for the issuance of a licence to a sponsor for the purposes of Part 6A of the immigration rules are published by the Home Office at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/

(**9**) See section 4(11) of the European Union (Croatian Accession and Irish Protocol) Act 2013.

(i) falls within any of paragraphs (6) to (16) or (18); or

(ii) holds an accession worker authorisation document and is working in accordance with the conditions set out in that document; and

(c) a person shall be treated as having worked in the United Kingdom without interruption for a period of 12 months if—

(i) he was legally working in the United Kingdom at the beginning and end of that period; and

(ii) during that period of 12 months, if his work in the United Kingdom was interrupted, any intervening periods of interruption did not exceed 30 days in total.

(6) Other than during any period in which he is also an accession State national subject to worker authorisation within the meaning of regulation 2 of the EU2 Regulations, a Croatian national 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 Croatia.

(7) A Croatian national is not an accession State national subject to worker authorisation during any period in which he is also an accession State national subject to worker authorisation within the meaning of regulation 2 of the EU2 Regulations and is working in accordance with those Regulations.

(8) A Croatian national is not an accession State national subject to worker authorisation during any period in which he is the spouse, civil partner, unmarried or same sex partner, or child under 18 of a person who has leave to enter or remain in the United Kingdom under the 1971 Act and that leave allows him to work in the United Kingdom.

(9) A Croatian national is not an accession State national subject to worker authorisation during any period in which he is the spouse, civil partner, unmarried or same sex partner of—

(a) a national of the United Kingdom; or

(b) a person that is settled in the United Kingdom in accordance with the meaning given in section 33(2A) (interpretation – meaning of "settled")(**10**) of the 1971 Act.

(10) A Croatian national is not an accession State national subject to worker authorisation during any period in which he is a member of a mission or other person mentioned in section 8(3) (member of a diplomatic mission, the family member of such a person, or a person otherwise entitled to diplomatic immunity) of the 1971 Act, other than a person who, under section 8(3A) (conditions of membership of a mission) of that Act, does not count as a member of a mission for the purposes of section 8(3).

(11) A Croatian national is not an accession State national subject to worker authorisation during any period in which he is a person who is exempt from all or any of the provisions of the 1971 Act by virtue of an order made under section 8(2) (exemption for persons specified by order) of that Act.

(12) A Croatian national is not an accession State national subject to worker authorisation during any period in which he has a permanent right of residence under regulation 15 of the EEA Regulations.

(13) Subject to paragraph (14), a Croatian national is not an accession State national subject to worker authorisation during any period in which he is a family member (X) of an EEA national (Y) who has a right to reside in the United Kingdom.

(**10**) Section 33(2A) was inserted by section 39(6) of, and Schedule 4 to, to the British Nationality Act 1981 (c. 61).

(14) Where Y is an accession State national subject to worker authorisation under these Regulations or an accession State national subject to worker authorisation within the meaning of regulation 2 of the EU2 Regulations, paragraph (13) only applies where X is the—

(a) spouse or civil partner of Y;

(b) unmarried or same sex partner of Y; or

(c) a direct descendant of Y, Y's spouse or Y's civil partner who is—

(i) under 21; or

(ii) dependant of Y, Y's spouse or Y's civil partner.

(15) A Croatian national is not an accession State national subject to worker authorisation during any period in which he is a highly skilled person and holds an EEA registration certificate issued in accordance with regulation 7 that includes a statement that he has unconditional access to the United Kingdom labour market.

(16) A Croatian national is not an accession State national subject to worker authorisation during any period in which he is in the United Kingdom as a student and either—

(a) holds an EEA registration certificate that includes a statement that he is a student who may work in the United Kingdom whilst a student in accordance with the condition set out in paragraph (17) and complies with that condition; or

(b) has leave to enter or remain under the 1971 Act as a student and is working in accordance with any conditions attached to that leave.

(17) The condition referred to in paragraph (16)(a) is that the student shall not work for more than 20 hours a week unless—

(a) he is following a course of vocational training and is working as part of that training; or

(b) he is working during his vacation.

(18) A Croatian national who ceases to be a student at the end of his course of study is not an accession State national subject to worker authorisation during the period of four months beginning with the date on which his course ends provided he holds an EEA registration certificate that was issued to him before the end of the course that includes a statement that he may work during that period.

(19) A Croatian national is not an accession State national subject to worker authorisation during any period in which he is a posted worker.

(20) In paragraph (19), "posted worker" means a worker who is posted to the United Kingdom, within the meaning of Article 1(3) of the Council 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(**11**), by an undertaking established in an EEA State.

"Highly skilled person"

3.—(1) In these Regulations "highly skilled person" means a person who—

(a) meets the requirements specified by the Secretary of State for the purpose of paragraph 245BB(c) (requirements for entry clearance as a Tier 1 (Exceptional Talent) migrant)(**12**) of the immigration rules; or

(b) has been awarded one of the following qualifications and applies for an EEA registration certificate within 12 months of being awarded the qualification—

(**11**) O.J. L 018, 21.1.1997, p.1

(**12**) Paragraph 245BB was inserted by the Statement of Changes to the immigration rules (HC863) laid before Parliament on 16 March 2011. The requirements specified for the purpose of paragraph 245BB(c) are set out in Appendices A and L of the immigration rules.