

## **END OF TRANSITIONAL ARRANGEMENTS FOR A8 NATIONALS<sup>1</sup> IN 2011**

### **Purpose**

1. This briefing paper outlines our understanding of the changes that will take place regarding migrant workers from A8 countries on 30 April 2011, and the possible impacts this may have upon local authority services. The likelihood of such impacts need to be considered by local authorities and other organisations working with migrants in advance of the changes, in order to plan and respond effectively. This document is based upon information received from a range of sources, but organisations are advised to seek legal advice where appropriate.

### **Recommendations**

2. Members are asked to endorse the recommendation that COSLA Strategic Migration Partnership (CSMP) continues to monitor the situation, presses for clearer guidance from Government Agencies such as DWP and provides updates to members and local authorities on any significant developments.

### **EU enlargement and how it affected the Scotland**

3. The 2003 European Treaty of Accession allowed 'transitional measures' to be applied to countries joining the EU, for a maximum of seven years. Those transitional measures, such as the requirement to register for work and certain limitations on access to benefits, come to an end on 30 April 2011. After this point, individuals from A8 countries will have the same rights and entitlements as those from other EEA member states. This will not affect the position of Bulgarians and Romanians since the UK Government can maintain restrictions on them until 2012 and may apply for a two-year extension, which will be granted in exceptional circumstances.
4. From accession on 1 May 2004 until September 2010, 90,145 migrants arrived in Scotland from the A8 countries and registered to work. We do not know how many of these are still in Scotland because of the way data is recorded, or how many have moved elsewhere in the UK, although there have been many reports that significant numbers have left. There will also be some people who were not required to register, such as the self-employed or family members arriving later on to join existing workers.
5. At present, there are restrictions on A8 nationals claiming benefits. They are required to register their work under the Workers Registration Scheme (WRS) until they have had a continuous year in such work without interruptions totalling more than 30 days. During this period, they may only claim certain in-work benefits. Once they have one year's continuous employment they may claim benefits on the same basis as other EEA migrants, which includes JobSeekers Allowance if they are made redundant.

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<sup>1</sup> A8 refers to the countries that joined the European Union in 2004, excluding Malta and Cyprus. They are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

6. National statistics show that the majority of A8 nationals applying for tax-funded income-related benefits in the UK over the past year (September 2009 to September 2010) failed the Right to Reside and Habitual Residence Test.
7. There have been increasing reports of A8 nationals becoming destitute as a result of not finding work or losing their jobs without one year of continuous employment.

### **What will change in 2011?**

8. On 30 April 2011 the transitional arrangements applied to A8 migrants should come to an end. After that, A8 migrants will be able to apply for benefits on the same basis as migrants from other EEA countries. EEA migrants entitlement to a range of benefits depends upon:
  - i. Their right to reside under EU law
  - ii. Whether or not they pass the 'habitual residence' test
9. An EEA migrant's right to reside depends upon them being a worker; self-employed; a work seeker; an economically inactive self-sufficient person or a student who is self-sufficient. The habitual residence test is complicated by the fact that 'habitual residence' is not defined in the legislation, and so is determined by the individual assessor. The key factors in deciding habitual residence are length, continuity and general nature of actual residence, but intentions are also considered.
10. There is a lack of clear information available from central government about the changes that will occur on 1 May 2011. There is also a lack of clear guidance available from government sources or advice agencies on the entitlements of EEA nationals. As a result there is a clear risk that service providers and advice agencies will struggle to respond effectively to the changes that occur on 1 May 2011.
11. Our understanding based on reading of DWP Guidance is that there is potential for A8 migrants to be able to access benefits such as Income Based Job Seekers Allowance, Council Tax Benefit and Housing Benefit within months of their arrival in the UK, and without necessarily having to work in the UK first. This is because EEA citizens may be entitled to claim these benefits while they are actively seeking work in the UK.
12. The other noteworthy change will be that the WRS will end. This scheme provided one of the main sources of information about A8 migrants coming into the UK. Information on A8 nationals and other migrant workers can still be obtained from DWP who produce information on National Insurance Numbers issues to foreign nationals broken down by nationality and local authority areas.

### **Implications of end of transitional controls**

13. The situation around benefits and entitlements is unclear and will require clarification in order for service providers and advice agencies to respond effectively. There is a need for guidance to be issued from central government as soon as possible.
14. It is worth noting that there are currently ongoing legal challenges which may change the rights of A8 migrants before May 2011. The European Commission is set to challenge the UK's operation of the WRS and if this is successful it may result in claims before April (or challenges to previous refusals) from A8 nationals excluded from benefits for periods of sickness and unemployment. It has also yet to be determined whether A8

parents of carers of children in education, who become economically inactive, can claim means tested benefits under the rulings earlier this year which led to this right for other EEA nationals.

15. There is also uncertainty about the size of the population potentially eligible for benefits as the key sources of data are only concerned with people registering for work and applying for national insurance numbers. There is potentially a significant number of people present in the UK who are not currently entitled to benefits because they did not complete 12 months continuous employment under the WRS, but who may become entitled to benefits in May.
16. The impact of these changes is far from clear. There is a range of views around whether this will have an impact on demand for services at all and, if so, how large that impact will be. Some potential changes include:
  - Increased applications for the housing register or homelessness services from A8 nationals with worker status, or who have a right to reside and are habitually resident.
  - Increased applications for income-related benefits from across all types of A8 national who are habitually resident.
  - Increased requests for help from Social Services from parents of children with specific care needs, as these groups may possibly be brought to the UK earlier.
  - A significant increase in demand for advice services from all A8 migrants
  - A possible reduction in A8 nationals considering return or 'reconnection'.
  - A possible increase in new arrivals from A8 countries due to the lack of requirement to register on the WRS, although this may be countered by the expected impact of recession upon work opportunities.
  - Increased processing and decision-making burden upon front line services.
17. Uncertainty about what will happen beyond May is heightened by the UK Government's wider changes to the welfare system for the general UK population, which will affect A8 and other EEA nationals too.

## **Conclusion**

18. There is clearly a set of issues here that need to be understood locally to enable effective planning for potential service pressures. The changes that occurred to local communities following the expansion of the EU in 2004 were largely unanticipated and caused pressure upon local services and some hostility in local communities.
19. CSMP will continue to keep partner organisations updated as we receive information.