

FREQUENTLY ASKED QUESTIONS ABOUT THE RIGHTS OF EEA NATIONALS TO ACCESS BENEFITS AND THE CHANGES FOR A8 NATIONALS FROM 1 MAY 2011.

**1. What is the change that is going to happen on 1 May 2011?**

The Worker Registration Scheme ('WRS') will no longer exist.

Any A8 national will be able to access income-based Jobseeker's Allowance, Housing Benefit and Council Tax Benefit by signing on as a jobseeker at Jobcentre Plus and meeting the requirements imposed on British Citizen jobseekers.

Any A8 worker in work will be able to access in-work benefits regardless of whether she has registered with the WRS. Many A8 workers who are out of work who could not access benefits in the past because they had not registered or had not completed enough time in registered work will be able to access benefits.

In brief, the rights of A8 nationals will be brought in line with the rights of other EEA nationals.

In theory, these changes could come in before 1 May 2011. However, the Government cannot keep the current system in place after that date. There are no exceptions to this.

This is the short answer. The questions below break this down in detail and provide information on the rights of EEA nationals to access benefits generally.

**2. Who are A8 nationals?**

These are citizens of the eight countries that acceded to the European Union on 1 May 2004: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. This category does not include Bulgarian and Romanian nationals ('A2 nationals'), who are discussed in further detail below (question 8).

**3. What is the current situation of EU migrants in the UK (including, for example, French or Portuguese nationals) accessing benefits?**

Some benefits have a 'right to reside' test attached to them. These include Housing Benefit, Council Tax Benefit, Income Support, income-based Jobseeker's Allowance,

income-related Employment and Support Allowance, Child Benefit, Child Tax Credit, Working Tax Credit and State Pension Credit as well as housing and homelessness assistance.

Other benefits do not have a right-to-reside test attached to them. Any EU migrant who meets the requirements imposed on British Citizens should be able to access Disability Living Allowance, Maternity Allowance, contribution-based Jobseeker's Allowance and contribution-based Employment and Support Allowance. For EU migrants who have made National Insurance contributions in the UK and social security contributions in other EU Member States, Jobcentre Plus must count the contributions made elsewhere in the EU as if they were NI contributions for the purpose of determining if the person has made sufficient contributions to get the contribution-based benefit.

As a matter of UK benefits law, citizens of other European Union countries (also known as 'EEA nationals'<sup>1</sup>) are entitled to access benefits in the following circumstances:

- 1. When they are seeking work.** EU migrants looking for work in the UK and who meet the other requirements imposed on British Citizen jobseekers are entitled to access income-based Jobseeker's Allowance as well as Housing Benefit and Council Tax Benefit, along with other benefits that similarly situated British Citizens would get (but not housing or homelessness assistance). An EU migrant can collect these benefits solely on the basis of being a jobseeker for at least six months, and for beyond that as long as she can show that she is continuing to seek work and has genuine chances of becoming engaged in employment.
- 2. When they are working or self-employed.** EU migrant workers are entitled to all the same in-work benefits (e.g. Housing Benefit) as British Citizens, and are entitled to housing and homelessness assistance.
- 3. In some circumstances when they have stopped work or self-employment.** An EU migrant worker who is temporarily unable to work due to illness or accident can access out-of-work benefits, including income-related Employment and Support Allowance, as well as housing and homelessness assistance. The same is true for an EU migrant who worked for at least one year and is registered as a jobseeker with Jobcentre Plus. Such a person does not have to rely on 'jobseeker' status (category 1) because she is still considered a 'worker'. (The difference is that she has access not only to benefits but also to housing and homelessness assistance.) An EU worker who has completed a fixed-term contract of less than one year can also retain 'worker' status if she signs on at Jobcentre Plus, but her 'worker' status can be reviewed after six months. (Note however that she can always go back into category 1 and rely on being a jobseeker.) EU migrants who stop work and go into vocational training related to their previous employment can also retain their 'worker' status in this way. If they were made involuntarily unemployed, those in vocational training do not even have to show a link between their vocational training and their last employment.

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<sup>1</sup> The terms 'EU migrants' and 'EEA nationals' are used interchangeably here. These include A8 and A2 nationals, as well as citizens of Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden and Switzerland. However, Irish citizens always pass the right-to-reside test, like British Citizens, by virtue of their nationality alone.

4. **Permanent residents.** EU nationals normally acquire permanent residence once they have resided ‘legally’<sup>2</sup> in the UK for a continuous period of five years. It is automatic: they can fill out form EEA4 and get a permanent residence card from the Home Office, but they should not have to do so to get access to benefits. Permanently resident EU nationals are entitled to access all benefits, housing and homelessness assistance, on exactly the same terms as British Citizens. Some EU migrants acquire permanent residence before five years have elapsed. These includes those who have resided in the UK for at least two years and worked here for one year and then become permanently incapacitated. (If the permanent incapacity results from an occupational injury, no condition as to length of residence applies.) It also includes some pensioners.
5. **Family members of the above.** This includes spouses, civil partners, children (and stepchildren) under 21, older dependent children and stepchildren, and dependant relatives in the ascending line of the EU migrant and/or her spouse. It does not matter if these individuals are EEA nationals or not, or if they have current residence documentation. Other relatives of EU migrants in the above categories (e.g. durable partners, cousins, aunts, nephews) can also access benefits, but only if they have been recognised as ‘extended family members’ by the UK Border Agency and been given residence documentation.

EEA nationals can generally also access Child Benefit and Child Tax Credit regardless of their work status, as long as they can show that they are otherwise self-sufficient.

#### **4. What are the rights of A8 nationals right now (i.e. until 1 May 2011)?**

A8 nationals cannot access benefits as jobseekers (category 1, above) until they have worked, in compliance with the WRS, for 12 months. This means registering their work with the Home Office, paying a fee (now £90) and alerting the Home Office if they change employers within those 12 months.

A8 nationals cannot access benefits in category 2 as workers unless they are currently registered under the WRS (including informing the Home Office of changes in employment) or have completed 12 months’ work in compliance with the scheme.

A8 nationals who have not yet completed 12 months’ work cannot get out-of-work benefits (category 3, above). That means that A8 nationals who have registered their work and complied with the scheme cannot get benefits now if they have not yet completed 12 months’ work, even if they are, for example, temporarily unable to work due to illness or accident.

In terms of permanent residence (category 4, above), permanently resident A8 nationals are entitled to benefits. However, the authorities at present have been unwilling to recognise as permanently resident A8 workers who have worked at any time without complying with the WRS.

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<sup>2</sup> The authorities in the UK will expect a person to show that she has been a jobseeker, a worker, self-employed, self-sufficient, a student and/or a family member of another EU migrant in one of those categories at all times during a five-year period. The AIRE Centre and MRN think that this might be too broad, and that the term ‘legally’ resident might cover more. Breaks of less than six months in any one year do not interrupt five years’ residence for these purposes.

## 5. Is this legal?

The AIRE Centre and MRN have long been sceptical about the compatibility with EU law of the restrictions on A8 nationals' access to benefits. The courts and tribunals in the UK have upheld these restrictions. However, the European Commission, which is responsible for overseeing the implementation of EU law, believes that at least some aspects of the restrictions on A8 nationals are unlawful. The Commission recently sent the UK Government a 'reasoned opinion' about this. While the reasoned opinion is confidential, it appears that the Commission is challenging the fact that A8 workers who have not yet completed 12 months of registered employment are excluded from out-of-work benefits if they become temporarily unable to work due to illness or accident, are made involuntarily unemployed or begin vocational training. If the Commission is not satisfied with the UK's response, it can bring infringement proceedings against the UK before the Court of Justice of the European Union.

Furthermore, there is currently a legal challenge being mounted on two fronts against the application of the right-to-reside test to income-based JSA, income-based ESA, Income Support and State Pension Credit concerning **all EEA nationals**. The argument is that any EEA national who meets the 'actual habitual residence' test (which is also imposed on British Citizens) should be able to access these benefits regardless of whether she has a 'right to reside'. That is because these four benefits are classified as social security benefits in EU law, and there is a prohibition on discrimination between British Citizens and EU migrants in relation to such social security benefits. The two fronts on which the legal challenge is being mounted are:

- **The Supreme Court of the United Kingdom.** The Supreme Court heard arguments on this point in the case of *Patmalniece v Secretary of State for Work and Pensions* in November and December 2010 and its judgment is expected in the coming months.
- **The European Commission.** The Commission believes that the restrictions on access to these four benefits are unlawful and has sent a Letter of Formal Notice to the UK on this point (the step before sending a 'reasoned opinion'). If the Commission is not satisfied with the UK's response, it could send a reasoned opinion and then take infringement proceedings against the UK in the Court of Justice of the European Union.

## 6. What exactly is changing on 1 May 2011?

The UK was allowed to apply transition arrangements regulating A8 nationals' right to access the labour market for up to seven years. (For the last two years, the UK has had to show that there was a 'serious disturbance to the labour market' justifying those restrictions. It was accepted that there was such a disturbance.) On 1 May 2011 the UK will no longer be allowed to treat A8 nationals any differently from non-accession (e.g. French) nationals. A8 nationals will be able to access benefits on the same basis as other EEA nationals in the five categories described above (question 2). The biggest difference is that on 1 May 2011 any A8 national can register as a jobseeker with Jobcentre Plus for benefits purposes. If she meets the same conditions imposed on British Citizens, she should be able to get income-based Jobseeker's Allowance, Housing Benefit and Council Tax Benefit right away.

As mentioned above, an EU migrant can rely on her 'jobseeker' status to access benefits for at least six months, but can do so for longer as long as she is continuing to

seek employment and has a genuine chance of becoming engaged in employment. EEA nationals, including, from 1 May 2011, A8 nationals, cannot be cut off from income-based Jobseeker's Allowance, Housing Benefit or Council Tax Benefit if they meet those requirements, even if six months have elapsed since they began seeking work.

### **7. Will there be any lingering effects for A8 nationals?**

The group with the most significant problems from 1 May 2011 will be economically inactive A8 nationals who are not able to work or to sign on as jobseekers with Jobcentre Plus (i.e. they cannot meet the requirements to show that they are seeking work) and are unable to show that they have retained their worker status (i.e. that they fit in category 3 in question 2, above). They might be in this situation because they are not currently able to seek work due to health reasons and they never completed 12 months' work under the WRS in the past. Some people in this situation will be able to argue that they are entitled to benefits as permanent residents (e.g. if they have been here for five years). However, those relying on permanent residence will be expected to show proof of their residence over five years (as workers, self-employed persons, self-sufficient persons and/or students at all times). Those who worked but did not register are unlikely to be recognised as permanent residents. Those with limited proof of their residence are also likely to face problems. Many of those who have worked for any amount of time *after* 1 May will be able to retain their worker status and access benefits and housing.

### **8. What about A2 nationals?**

Bulgarian and Romanian nationals ('A2 nationals') face a different set of restrictions which will remain in place beyond 1 May 2011. A2 nationals require worker authorisation (a work permit) if they wish to work, unless they enjoy an exception. The easiest way for A2 nationals to get access to the benefits system is to become self-employed, as there is no restriction on self-employment for these nationals. Many A2 nationals are allowed to work, particularly if they have had permission to work in the UK in the past or are family members of British Citizens or other EU migrants. In particular, the A2 family members of A2 nationals who are self-employed, self-sufficient or students also enjoy the right to work and can get residence documentation from the UK Border Agency to prove that. The restrictions on A2 nationals may continue until 1 January 2012, and even longer if there is a 'serious disturbance to the labour market'.

### **9. Where can I get advice for EEA nationals?**

The AIRE Centre is a specialist law centre providing free legal advice on European law issues, including EU law on the free movement of persons. If you have a query about an individual case, the best way to get in touch is by email: [info@airecentre.org](mailto:info@airecentre.org). We will then log in your request and aim to get written advice to you within two weeks. If you want to discuss this briefing, you can contact Adam ([aweiss@airecentre.org](mailto:aweiss@airecentre.org)) or Saadiya ([schaudary@airecenter.org](mailto:schaudary@airecenter.org)) at the AIRE Centre or Jan ([j.brulc@migrantsrights.org.uk](mailto:j.brulc@migrantsrights.org.uk)) at MRN.

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