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MINISTERIAL WORKING GROUP ON ASYLUM AND MIGRATION

FREE MOVEMENT OF WORKERS FROM NEW EU MEMBER STATES

Note by the Secretaries

Summary

1. This paper invites Ministers to consider whether to retain the Worker Registration Scheme (WRS) for (up to) another three years, or close it down at the end of April 2006. The paper sets out the implications and risks of such a decision on the UK's social assistance system (as well as child benefit and child tax credit)¹, the Government's wider managed migration policy, future waves of enlargement and public and media relations.

Recommendation

2. Ministers are invited to consider whether to retain the WRS for (up to) another three years from 30 April 2006.

¹ References to social assistance in this paper include local authority housing and homelessness assistance.

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Background

Legal Context

3. The WRS was established in May 2004 and applies to nationals from eight of the new EU Member States ('the new Member States')² who wish to work in the UK.

4. The Accession Treaty allowed existing Member States to derogate from the usual position under European Community law, which gives EEA workers and work-seekers a right to reside in other Member States (i.e. the right to move freely, to live and take up employment or look for work). The derogation applies for an initial period of two years (i.e. until April 2006) and could be extended for a further three years. By 1 May 2009, all restrictions on the free movement of workers are to be lifted unless there is a serious disturbance to the labour market, in which case restrictions may be continued for a further two years.

5. The Accession Treaty did not provide for any derogation from EU regulations governing EEA nationals' rights to social assistance or social security in other Member States. Prior to 1 May 2004, individuals could generally qualify for income-related benefits, housing and homelessness assistance, if they were 'habitually resident' in the UK, normally after a couple of months' residence; or, in the case of child benefit and the child tax credit, ordinarily resident.

6. **Annex A** explains the effects of the derogation and the benefits, housing and tax credit regulations in more detail.

Government decision

7. In 2002 the Government announced, with cross-party support, that it intended to open the UK labour market fully to citizens of the new Member States. By early 2004, however, it became clear that most other existing Member States (significantly, Germany, Spain, France, Austria and Italy) intended to apply restrictions. At the same time, the Government came under significant public pressure to review its decision, stimulated by concerns (particularly in the tabloid media) about large 'floods' of people migrating to the UK, claiming benefits and threatening the jobs of domestic workers.

8. The Government announced in February 2004 that it would put in place transitional arrangements to monitor the numbers of people from the new Member States working in the UK and to restrict access to social assistance by work-seekers from those States.

Current arrangements

9. The *Accession (Immigration and Worker Registration) Regulations 2004* have two main effects:

- (a) Firstly, they require most workers from the new Member States to register with the WRS in order to work legally in the UK (first applications cost £70). Until they have worked for authorised employers for 12 months continuously³, they do not have full rights of free movement and are not eligible for out-of-work benefits and local authority housing if they become unemployed;

² Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

³ I.e. with no more than 30 days' interruption in any 12 month period

- (b) Secondly, nationals from the new Member States do not have a right to reside in the UK as work seekers. This means that while they are seeking work they only have a right to reside as an economically inactive person, and this right is conditional on them having sufficient resources to avoid becoming a burden on the UK social assistance system. Amendments to income-related benefits, child benefit, child tax credit and housing regulations effectively restricted access to these forms of support by economically inactive EEA nationals, by requiring claimants to demonstrate that they had a right to reside in the UK. Without the WRS and the associated regulations, access to income-related benefits by unregistered workers and work-seekers from the new Member States could not also be controlled in the same way. Further detail is provided at **Annex A**. The European Commission have shown concern that these arrangements may be in contravention of EU legislation on equal treatment of workers. Although the risk of infraction has decreased, it still remains a possibility.

Consideration

10. The Government now needs to decide whether to:
- **Close the Worker Registration Scheme** and provide nationals from the new Member States with full free movement rights. This would mean the UK could no longer restrict access to social assistance, child benefit and child tax credit beyond the limits currently in place for citizens of the EU15. In other words, it would become impossible to restrict access to benefits and local authority housing by workers from the new Member States if they ceased to work within the first 12 months or by work-seekers (once they had become habitually resident – which generally takes only a couple of months – or ordinarily resident in the case of child benefit and child tax credit); or

- **Maintain the current arrangements** for (up to) another three years, with periodic reviews, as necessary.

Process and Timing

11. The UK is required to inform the European Commission **in March 2006** whether it intends to continue its transitional arrangements beyond 30 April 2006. Closure of the WRS would require affirmative regulations to repeal the *Accession (Immigration and Worker Registration) Regulations 2004*. The regulations would need to be laid **no later than February 2006**. No legislative or operational changes would be required to retain the Worker Registration Scheme.

12. Bulgaria and Romania are due to accede to the European Union on 1 January 2007 (although this may be delayed until January 2008). Government will need to decide whether to open its labour market to Bulgaria and Romania. This is covered in paper AM(MWG)(05)2. The arrangements for the eight new Member States need not be affected by decisions relating to the Bulgaria and Romania accession. A decision to close the WRS for the eight new Member States would not prevent it being re-established for Bulgaria and Romania, however, it could make Bulgaria and Romania a hotter media issue during the passage of the EU Accessions Bill.

Experience since EU Enlargement

13. In general the UK's arrangements have proven very effective in limiting the number of people attempting to claim social assistance, whilst providing employers

with a large pool of labour to ease recruitment difficulties and skills shortages, particularly in the agriculture and hospitality and catering sectors.

14. The evidence shows that although the number of workers registering for employment has been higher than expected (with 232,000 applicants between May 2004 and June 2005), overall the impact on the UK labour market has been modest but broadly positive, with an increase in output and total employment. There is anecdotal evidence that some workers are returning home after brief periods of employment in the UK. Net migration is estimated to be in the region of 60,000 in the first eight months since enlargement⁴, which is not far from early UCL estimates of 70,000 annual net migration from the new Member States. Proportionately, there has been significantly more migration to Ireland than the UK⁵. The WRS appears to have reduced the number of people working illegally⁶ and limited opportunities for exploitation of migrant workers.

15. Claims for social assistance, child benefit and child tax credit have been low. According to the quarterly monitoring reports published by the Home Office, for example, between May 2004 and June 2005 there were 12,222 applications for child benefit (of which 41% were approved) and 3444 applications for child tax credits (of which 52% were approved). Fewer than 1,700 applications for Income Support and Jobseeker's Allowance were processed and of these just over 50 met the 'right to reside' test. The same is true of housing and homelessness assistance. For example, between May 2004 and March 2005 there were 43 lettings by local

⁴ Estimate from a DWP study: "The impact of FMOW from central and eastern Europe on the UK labour market: early evidence", based on data from the Labour Force Survey.

⁵ A report by the European Citizen Action Service found that Ireland has received over 85,000 workers from the 10 new EU countries in the period from May 2004 to June 2005. Calculated on a per capita basis, Ireland received six times as many migrant workers as the UK during the same period. This is probably a result of the Irish policy to introduce a presumption of only issuing work permits to third country nationals where employers can prove no EEA worker is able to fill the post.

⁶ Up to 30% of people applying for registration may have already been in the UK before 1 May 2004. The DWP study also identified reduction in illegal workers as a key outcome of the UK's policy

authorities of long term social housing to people from the new Member States: this represents just 0.03% of the average number of lettings to all new tenants over a typical 11 month period.

Arguments for Closing the Worker Registration Scheme

16. There are four main arguments for closing the WRS and providing full, free access to the UK labour market.

- (a) Arguably, **the WRS has served its purpose**: analysis of the WRS data has demonstrated that the UK labour market has successfully absorbed the new workers. Allowing for some seasonal variation, levels of applications per quarter have been stable since the inception of the scheme. At this stage it is unlikely that this trend will change, other than for levels of applications to decline. The vast majority of workers from the new Member States are young, single, in full-time employment, and not claiming benefits. As time goes by the relevance and usefulness of the WRS data (both analytically and presentationally) is diminishing because workers are not required to inform the WRS when they leave employment. Moreover, the commitment to publish quarterly monitoring reports gives the media a regular opportunity to compare the high numbers of registrations with original 'guesstimates' that net migration from the new Member States would be between 5,000 and 13,000 migrants a year.
- (b) The **Home Office has incurred costs of around £3.55 million**⁷ in unrecovered application fees to run the WRS during 2004-05 and 2005-06. However, from 1 October 2005, when the new application fee comes into effect, the WRS will be fully self-financing. There is a risk that the WRS may increase costs in other

parts of IND, if more people from the new Member States apply for EEA residence permits, which must be considered free of charge. Nationals of the new Member States will be required to show a Residence Permit when they are no longer subject to the WRS (after 12 months' continuous employment) in order to prove their status to employers. However, early data does not show any evidence of an increase in demand, but Home Office will continue to monitor volumes.

(c) **the WRS creates additional bureaucracy and costs for employers.**

Removing the registration requirement would result in some administrative savings for employers, would support the Government's wider objectives to reduce regulatory burdens, and may help ease the handling of the introduction of new civil penalties legislation, currently before Parliament⁸. However, only around 7%⁹ of UK employers employ workers from the new Member States, so the regulatory savings are unlikely to be significant. The registration fee is also a significant sum for individuals to pay.

(d) There has been some **lobbying amongst employers** for closure of the WRS, particularly the agriculture, food processing and hospitality sectors (where most workers are located). However, the employer lobby has been contained and managed effectively within the Illegal Working Stakeholder Group, chaired by the Minister of State for Immigration, Nationality and Citizenship.

Arguments for retaining the WRS

⁷ Excluding start-up costs

⁸ NOP survey for Manpower, of 2,100 employers, conducted in February 2005

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17. On the other hand, a decision to close the WRS would have significant handling and cost implications. These are set out below.

- (a) Whilst it is extremely difficult to assess how many people have been prevented from coming to the UK or from seeking social assistance as a result of the transitional arrangements, there is a clear risk that closing the WRS could **create a 'pull factor'**, attracting more migrants from the new Member States to the UK, some of whom might arrive without a job or with limited resources. DWP estimate that the current arrangements may have saved around £5 million a year in payment of income-related benefits.
- (b) Closing the WRS would almost certainly mean **more people from the new Member States would be eligible to claim income-related benefits, child benefit and child tax credit**. If the numbers who have claimed Jobseeker's Allowance in the first year were to rise from just one to two thousand, the cost in payment of income-related benefits could be in the order of £7 million.
- (c) Closing the WRS could also mean an increase in the number of people eligible for local authority housing and, possibly, owed a duty to secure accommodation under the homelessness legislation. This could put **greater pressure on local authority housing supply**, particularly in London and the South East, in some cases at the expense of UK nationals.
- (d) In addition to creating a fresh 'pull factor' abroad and possibly undermining previous messages that people should only come to the UK to work, not to claim benefits and housing, the change in policy is likely to be **perceived domestically as a loosening of the Government's grip on migration and benefit shopping**. This would contrast unhelpfully with other Government

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policy to tighten management of the migration system (as set out in the Five Year Strategy for Immigration and Asylum). At the same time, public and media opinion remains largely resistant to rational arguments for migration, and the media climate is arguably more hostile to migration now than in early 2004. There is an additional risk that this debate could also be skewed by the Bulgaria and Romania question (see paper AM(MWG)(05)(2)).

- (e) There is **no evidence that other Member States intend to change their policies**, despite pressure from the Commission and lobbying by the new Member States. By closing the WRS, the UK would be going out on a limb, reigniting the media debate to no obvious (domestic public) advantage; workers would still be able to come to the UK and work, but would now have a stronger claim to social assistance while they were not working. There is a risk the Government could be accused of making the UK a more attractive destination to less economically desirable migrants.
- (f) There is also **an argument for consistency and fairness**. If the WRS is closed, then those who have complied with the registration requirement so far will be in no better a position than those who have failed to do so. The intention was that only those who complied would become eligible for full workers' rights after 12 months of working legally. But closing the WRS would mean that those who had not registered would also become immediately eligible for full workers' rights. This could have implications for the effectiveness of any WRS policy for Bulgaria and Romania on their accession to the EU. It could become difficult to convince Romanian and Bulgarian workers of the need to register (and pay for the application) if they expected the measures to be withdrawn after two years.

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Conclusion

18. A decision to close the WRS would have advantages in reducing bureaucracy for (some) employers and allowing Home Office resource to be diverted to other priorities. However, it would also require the Government to relax controls on access to social assistance and to defend a change in the status quo - a status quo which is generally accepted, and in some cases welcomed. Since EU enlargement, Government has consistently promoted the success of the UK's transitional arrangements.

**Cabinet Office
September 2005**

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RESIDENCE TESTS FOR INCOME-RELATED BENEFITS AND LOCAL AUTHORITY HOUSING

Like UK and third-country nationals, EEA nationals (subject to certain exceptions¹⁰) must be **habitually resident** in the UK, Channel Islands, Isle of Man or Republic of Ireland – i.e. the Common Travel Area - to qualify for income-related benefits¹¹ and local authority housing¹².

A new stage was added to the habitual residence test from 1 May 2004. Amending regulations¹³ introduced a requirement for claimants to have a **right to reside** in the Common Travel Area before they could be considered habitually resident. Though introduced at the same time as the Worker Registration Scheme (WRS), the new “right-to-reside” test is quite separate: the relevant regulations were not made under the Accession Treaty derogation and apply to all claimants.

Implications for nationals of pre-2004 Member States¹⁴

EEA nationals may derive their right to reside in the UK from various provisions in EC law. For instance, at present¹⁵:

¹⁰ EEA workers, the self-employed and subject to conditions retired workers and self-employed persons; refugees; people who have been granted exceptional leave to enter or remain in the UK; people who have been deported, expelled or otherwise removed by compulsion of law from another country to the UK; and people who have left Montserrat since November 1995 because of volcanic eruption there

¹¹ Income Support, income-based Jobseeker's Allowance, Pension Credit, Housing Benefit and Council Tax Benefit

¹² The allocation of council housing via a waiting list and homelessness assistance

¹³ *Social Security (Habitual Residence) Amendment Regulations 2004*

¹⁴ and nationals of Cyprus and Malta, who acquired full rights of free movement from 1 May 2004

- a. **workers** have the right to reside in another Member State - such as the UK - by virtue of Article 39 EC, Regulation 1612/68 and Directive 68/360;
- b. **retired workers** have, subject to conditions, the right to remain in the territory of a Member State after having been employed in that State, by virtue of Regulation 1251/70;
- c. the **self-employed** who have the right under Article 43 EC to establish themselves and to provide services in another Member State have the right to reside in that State by virtue of Directive 73/148;
- d. **work-seekers** have the right to move freely within the EU to search for work and to reside for at least six months and thereafter for as long as they are continuing to seek work and have a genuine chance of being engaged, by virtue of Article 39 EC and Regulation 1612/68 (as interpreted in Case C-292/89 *Antonissen*); and
- e. the **economically inactive** – such as students, pensioners who have not exercised the right of free movement to undertake economic activity, and others such as lone parents and those unable to work because of ill health – have the right to reside anywhere in the EU by virtue of Article 18 EC and Directives 93/96, 90/365 and 90/364. This

¹⁵ A new “rights of residence” Directive (Directive 2004/38) must be transposed by 30 April 2006 and will replace much of the EC legislation mentioned below, though in many respects the effects of the provisions will remain the same.

right is subject to the proviso that they have sufficient resources to avoid becoming an unreasonable burden on the social assistance system of the host Member State during their period of residence (as well as having comprehensive sickness insurance cover in that State).

Although there are legal challenges in a number of cases currently before tribunals and the courts, the effect of the new “right-to-reside” test is to deny access to income-related benefits and local authority housing by **economically inactive** EEA nationals, including lone parents and pensioners. To have a right to reside in the UK, they must have sufficient resources to avoid becoming an unreasonable burden on the social assistance system during their period of residence. If they apply for income-related benefits, their ability to satisfy that condition is put in doubt. As long as they have not acquired a right to reside, they will not qualify for income-related benefits and local authority housing.

Implications for nationals of the new Member States¹⁶

In the case of eight of the new Member States¹⁷, the Accession Treaty allows derogation from Articles 1 to 6 of Regulation 1612/68, which give rights in relation to free movement of **workers** and **work-seekers**. The derogation lasts in the first instance for two years following the date of accession, i.e. until 30 April 2006. During the first two years following the date of accession and possibly longer¹⁸, the present

¹⁶ other than nationals of Cyprus and Malta

¹⁷ i.e. the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

¹⁸ Subject to certain conditions, Member States may continue to apply these measures for a further three years – until 2009 – and exceptionally until 2011, if there are serious disturbances or threats to the country’s labour market. Otherwise, free movement rights will apply from 1 May 2006.

Member States apply national measures under which they can either restrict or allow entry to their labour markets for nationals of the eight relevant states.

The national measures introduced by the UK were the *Accession (Immigration and Worker Registration) Regulations 2004*.

Workers from the new Member States derive their right to reside in the UK from these domestic regulations rather than the EC measures listed at (a) above. They have a right to reside while they are registered under the Workers Registration Scheme and working for authorised employers in accordance with the regulations¹⁹. Once they have worked in this way for 12 months (with no more than 30 days' interruption), they acquire the same rights of free movement as other EEA workers and may have access to out-of-work benefits and local authority housing if they become unemployed.

The domestic regulations provide that nationals from the new Member States are not entitled to reside in the UK as **work-seekers** (under the EC measures listed at (d) above) but only as self-sufficient people (i.e. under the EC measures listed at (e) above). This means that, in order to have a right to reside in the UK, they must - like economically inactive EEA nationals - have sufficient resources to avoid becoming an unreasonable burden on the social assistance system during their period of residence. If they apply for income-related benefits, their ability to satisfy that condition is put in doubt. As long as they have not acquired a right to reside, they will not qualify for income-related benefits. Under current housing regulations EEA nationals whose only right to reside derives from their status as economically

¹⁹ Certain other categories of workers – e.g. those who had already worked lawfully in the UK for 12 months by 1 May 2004 – have the right to reside too.

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inactive persons are ineligible for local authority housing or homelessness assistance (whether or not they are self sufficient).

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RESIDENCE TESTS FOR CHILD BENEFIT AND CHILD TAX CREDIT

General Position

To claim the child and working tax credits and child benefit, a person (irrespective of nationality) must be both present and ordinarily resident in the UK. A person is present in the UK if he or she is physically present here throughout the period of the award, although temporary absences of up to eight or, in some cases, twelve weeks may be disregarded. The term “ordinarily resident” is not defined in tax credit or child benefit legislation but its established meaning is that a person is ordinarily resident if:

- he or she normally resides in the UK (apart from temporary or occasional absences); and
- residence here has been adopted voluntarily and for settled purposes as part of the regular order of their life for the time being.

Ordinary residence is different from the “habitual residence” test applicable for access to income-related social security benefits and housing and homelessness assistance. The period of time spent in the UK may in certain circumstances be taken into account (together with other factors) when deciding whether a person is habitually resident. However, the ordinary residence test for tax credits and child benefit does not require a claimant to have already been living in the UK prior to the date of claim. The ordinary residence test thus allows people to claim tax credits and child benefit even if they have only just arrived in the UK, provided they can demonstrate to HM Revenue and Customs that they genuinely intend to make this country their settled home.

As part of a package of measures across Government to tighten the residence tests generally for access to benefits , tax credits and housing support, the tax credit and child benefit regulations were amended in April 2004. For new claims made on or after 1 May 2004 (up to 30 April 2006), access to the child tax credit and child benefit is restricted to those people with a “right to reside” in the UK.

Position for nationals of the new Member States (other than Cyprus and Malta)

For nationals from the new Member States (other than Cyprus and Malta), the introduction of the right to reside generally means that only those who are registered workers or are exempt from registration (such as the self-employed) or who have worked in the UK lawfully and uninterruptedly for twelve months or more are able to claim child benefit and the child tax credit.

Workers from these new Member States can also claim the working tax credit on the same basis as other EEA workers. This is because the working tax credit falls within Article 7(2) of the EC Regulation 1612/68 and is thus outside the scope of the derogation from the Treaty of Accession. As a work incentive, the working tax credit is only paid to people in remunerative work.

Nationals from these new Member States who are **work-seekers** or **economically inactive**, as well as economically inactive individuals from other EEA Member States, are not entitled to claim child benefit or the child tax credit unless they have sufficient resources not to be an unreasonable burden on the UK's social assistance system.

UK's experience since EU enlargement: Summary of Evidence

- the **number of workers** applying for registration was higher than expected²⁰. Between May 2004 and June 2005 there were 232,000 applicants to the Worker Registration Scheme. There is some evidence of seasonality, with applications peaking in summer 2004 and spring/summer 2005, and anecdotal evidence of workers, particularly in the agricultural sector, returning home after short periods in the UK;
- **net migration** to the UK from the new Member States is estimated to be around 60,000 for the first 8 months of the WRS²¹. Proportionately, there has been significantly more migration to Ireland than the UK²²;
- a recent study by DWP²³ concluded that overall **the labour market impact** of enlargement has been modest but broadly positive. Output and total employment have increased, with minimal impact on the UK workers, although there is evidence of some possible downward pressure on wages in the agricultural sector.

²⁰ Note: the Worker Registration Scheme only provides a cumulative figure for the number of people who have applied to register for work – it does not reflect how many workers may be returning home. There is some anecdotal evidence that some workers from the new MS come to the UK to undertake seasonal work and return home after a few weeks or months;

²¹ Estimate from a DWP study: "The impact of FMOW from central and eastern Europe on the UK labour market: early evidence", based on data from the Labour Force Survey.

²² A report by the European Citizen Action Service found that Ireland has received over 85,000 workers from the 10 new EU countries in the period from May 2004 to June 2005. Calculated on a per capita basis, Ireland received six times as many migrant workers as the UK during the same period. This is probably a result of the Irish policy to introduce a presumption of only issuing work permits to third country nationals where employers can prove no EEA worker is able to fill the post.

²³ "The impact of FMOW from central and eastern Europe on the UK labour market: early evidence"

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- Up to 30% of people applying for registration may have already been in the UK before 1 May 2004. We can reasonably assume that a proportion of these were here **illegally** before enlargement, and that the arrangements have had a 'regularising effect'. This is reinforced by findings from the DWP study;
- Workers from the new Member States are going where the work is, helping to **fill the gaps in our labour market**, particularly in administration, business and management, hospitality and catering, agriculture, manufacturing and food, fish and meat processing.
- In many cases nationals from the new Member States are **supporting the provision of public services** in communities across the UK. Between July 2004 and June 2005, over 3000 nationals from the new Member States registered as bus, lorry and coach drivers and almost 5500 as care workers. There were 560 teachers, researchers and classroom assistants; 290 dental practitioners (including hygienists and dental nurses); and over 300 GPs, hospital doctors, nurses and specialists.
- Just under a fifth of registered workers were based in London. However, workers are **based all over the UK** particularly Anglia and the Midlands with 16% and 11% of the total respectively.
- 97% of workers were **working full time**, and over 99% of applications for National Insurance numbers made by nationals from the new Member States between May 2004 and June 2005 were for employment purposes.

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- The vast majority of workers are **young and single**, 82% of workers were aged between 18 and 34. 95% of registered workers had no dependants living with them in the UK, and only 2% had dependants under the age of 17 with them.
- The numbers applying for tax-funded income-related benefits, child benefit, tax credits and housing support was **very low**. Fewer than 1700 applications for Income Support and Jobseeker's Allowance were processed between May 2004 and June 2005, and of these applications just over 50 were allowed to proceed for further consideration.

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