Benefits for migrants from the new EU countries

On 23 February 2004 the Home Secretary, David Blunkett, announced that migrants from the accession countries that will join the EU on 1 May 2004 will face restrictions on their access to benefits after arriving in the UK.

Mr Blunkett announced in the Commons that a workers registration scheme will be set up for nationals from the accession countries. This register will give the right to reside here to registered workers, and to work-seekers from the Accession Countries but only if they are able to support themselves.

With regard to benefit entitlement Mr Blunkett said –

“If you register you can come to the UK to work legally and contribute but you cannot claim benefits ... Tougher benefit rules will make sure our generosity is not exploited.”

The Home Secretary also stated that the restriction on access to benefits will be focused on those who do not work, with more relaxed rules for those who do –

“It is clearly not right that people should be able to come here, fail to get a job and then enjoy access to the full range of public services and social security benefits ... They cannot draw benefits without themselves contributing to the rights and entitlements that should go hand in hand with the responsibilities and duties ...”

The Secretary of State for Work and Pensions will bring forward regulations to prevent access to benefits for those not working, and ... the Paymaster General will bring forward regulations to prevent them from claiming child benefit.”

On 27 February 2004 Work and Pensions minister Chris Pond confirmed to Parliament that –

- people who are not working will not be able to claim Income Support, income based Jobseeker’s Allowance, Pension Credit, Housing Benefit and Council Tax Benefit.
- those who are working legally will be able to claim tax credits, Child Benefit, Housing Benefit and Council Tax Benefit.
- people who have worked legally, and without interruption, for twelve months will be able to claim the full range of UK benefits (if, for example, they lose their job).
- those not working and not entitled to benefit will be required to leave the UK –

“For two years, possibly longer, we will require accession nationals to be able to support themselves. If they are unable to do so, they will lose any right of residence and will have to return to their own country.”

Further provisions announced by the Home Secretary include –

- there will be no right of appeal against benefit refusals –

“We will not need an appeals system under the rules. If they do not have a job and are not registered, we will be able to disqualify them from benefits under the European accession rules.”

The restrictions will only apply to eight of the ten accession countries –

- the EU has accepted that Malta and Cyprus, with which we have tremendous historical connections, have freedom across the board in every country for both work and benefits and support, as we do.”

- there will no change to the habitual residence test for “British-born citizens who have chosen to move to an EU country or to the United States, which would make it more difficult for people to return to this country from working abroad” –

“The statement applies to accession country nationals, not to British nationals returning from overseas. Their entitlement remains the same.”

In its press release ‘No UK benefits for EU Accession Countries’, the Home Office confirmed that regulations will be introduced to set up the workers registration scheme in March 2004, coming into force on 1 May 2004. Whilst the press release also confirmed that new regulations will be laid to amend social security legislation to include the new provisions, no timescale was given for their introduction. However, as we go to press, it is again expected that they will be laid to come into force from 1 May 2004.

The ten accession countries are:

- Czech Republic
- Estonia
- Hungary
- Latvia
- Lithuania
- Poland
- Slovakia
- Slovenia
- Cyprus
- Malta
Housing Benefit sanctions for anti-social behaviour

Government shelves plans following consultation

The Government has shelved plans to use Housing Benefit sanctions to tackle anti-social behaviour following consultation on proposals issued in May 2003.

The proposals were criticised by a coalition of 27 organisations including Shelter, Bernardos, Help the Aged, Citizens Advice and Nacro who expressed concern that the proposals would lead people further into poverty and create homelessness and social exclusion. It was also feared that, far from ending anti-social behaviour, it would simply move those involved, and their disruptive behaviour, on to a new set of neighbours.

Speaking as the results of the consultation were published, Work and Pensions minister Chris Pond said –

“There are already a wide range of tools the Government can use to deal with behaviour that makes people’s daily lives a misery, such as anti-social behaviour orders and acceptable behaviour contracts. The Government has recently strengthened these existing powers with further measures in the Anti-Social Behaviour Act 2003 and new proposals in the Housing Bill currently before Parliament.

...We want to judge the effectiveness of the range of existing measures before introducing a new one. But we have not ruled out using other means, in the future as we learn from experience and establish what works.”

The outcome of the consultation can be found at www.dwp.gov.uk/consultations/consult/2003/antisoc/analysis.pdf ■

EMPs are better trained than medical members on appeal tribunals

The DWP has suggested that the reason so many appeals against decisions on incapacity and disability benefits are successful is that doctors sitting as medical members on appeal tribunals are not as well trained as doctors acting on behalf of the DWP as ‘examining medical practitioners’ (EMPs).

In evidence to the Commons Public Accounts Committee in December 2003, representatives of the DWP and SchlumbergerSema – the private company contracted by the DWP to undertake the medical assessment of incapacity and disability benefit claimants – were questioned on progress in improving medical assessments following a National Audit Office (NAO) report published in October 2003.

The NAO report had highlighted that in about a third of cases tribunals considered the EMP’s medical report had underestimated the severity of the claimant’s disability, and that more than half of cases were overturned at appeal.

However, in evidence to the Committee, David Anderson, Chief Executive of Jobcentre Plus, said that in his view, and contrary to the NAO’s findings, the proportion of cases where incorrect medical evidence gives rise to appeals is relatively small, and DWP Chief Medical Adviser Professor Mansel Aylward said that –

“In my professional opinion, using my judgment, and a scientific method ... I found that in half the cases I did not consider the disability was underestimated ... If you look at the doctors who are making these decisions sitting in the appeals service compared with doctors who are working for Medical Services Schlumberger, we should perhaps think that one of the reasons there may be a difference here is that doctors in the appeals service do not receive the significant training that Medical Services’ doctors do, they do not get monitored to the same extent and they are not participating in revalidation to the same extent.”

NB – Parliamentary Under-Secretary of State for Work and Pensions Maria Eagle confirmed in Parliament on 3 February 2004 that “over the past year we threw 58 (Medical Services’) doctors off our lists for not achieving high standards.” ■

Stop press – it was also announced in February 2004 that SchlumbergerSema has been acquired by an international information technology company, Atos Origin, for approximately $1.5 billion.

Revisions and supersessions

New tribunal of commissioners decision

Against a background of conflicting case law, a tribunal of Commissioners – in CDLA/4751/2002 – has given guidance on the power of tribunals in relation to some of the more thorny issues surrounding revalidation to the same extent and they are not participating in revalidation to the same extent.

The Commissioners have decided that a tribunal has the power to remedy a defect in a decision made by the Secretary of State unless it has so little “coherence or connection to legal powers” that it does not amount to a decision at all. So, for example, if the Secretary of State makes a revision decision that should have been a supersession (or vice-versa), the tribunal will be able to make the correct decision without referring the matter back to the Secretary of State.

The Commissioners also decided that –

- a tribunal does have the power to make a decision less favourable to the claimant than a supersession decision under appeal.
- a tribunal has the power to consider matters not raised by any of the parties to the appeal. They are not however obliged to consider such matters.
- under regulation 13C(3) of the Social Security (Claims and Payments) Regulations 1987, the Secretary of State can revise a decision to award Disability Living Allowance on renewal if he can show that, between the date of the decision and the renewal date, the claimant’s health has either improved or deteriorated more than the decision maker anticipated.

For a full summary of, and a link to, the decision, see the new commissioners summary area of the rightsnet website – briefcase – available as a link from the home page @ www.rightsnet.org.uk ■
100 m unmatched NI records in the Inland Revenue’s files

Further to our report in review 99 that problems with the government’s National Insurance (NI) computer have meant that over the last five years the Inland Revenue has failed to send out reminders to millions of people who needed to make voluntary payments to top up their state retirement pensions, the National Audit Office (NAO) has published a report that says that the Inland Revenue is continuing to experience difficulties maintaining individual’s NI Contribution records due to ongoing IT problems.

In the report – on the NI Fund Account for 2002/2003 – the NAO highlights that, despite the Inland Revenue’s efforts to deal with the problems associated with the NI Recording System (NIRS2) computer, there are still 100 million unmatched NI records in the Inland Revenue’s files.

If non-matching items could be traced, possibly 3 million of them could have an impact on benefit payment. Whilst in 70 per cent of cases it was likely to be less than £2 a week, a percentage might be as much as £250 a year.

Retirement Pension deferrals

New rules to ensure ‘simplicity, security and choice’

On 12 February 2004 the Government published the Pensions Bill that is principally designed to safeguard workers whose private pension either goes bust or significantly under performs. To tackle this the Government is introducing the Pension Protection Fund, which is designed to protect workers in this position, as well as a Pensions Regulator and Ombudsman.

The Bill also includes, however, proposals for changing the rules that apply to those who defer receipt of their state retirement pension, including the option to receive the deferred pension in a lump sum. Whilst people can currently defer their State Pension for five years, the Government proposes that the restriction should be removed, and that –

- deferring a pension would result in people receiving a larger weekly pension than they do at present.

Currently, a person will get around 7.5% extra for every year that they delay taking up the State Pension. Whilst this is due to increase to around 10.4% from 2010, the Government wants to bring the change forward, so that people will start getting the increased rate from 2005.

- by deferring a pension for at least a year, people could elect to receive it in a lump sum.

Secretary of State for Work and Pensions Andrew Smith has announced that interest will be paid on the lump sum at a rate at least 2% above the Bank of England base rate, and suggested that a man with an average pension would result in people receiving a larger weekly pension than they do at present.

The Bill is available @ www.publications.parliament.uk/pa/cm200304/cmbills/057/2004057.htm.

Housing Benefit delays

Local Authorities have ‘a long way to go’

Local Authorities in England have a ‘long way to go’ to meet the 4 week national standard for passing housing benefit appeals on to the Appeals Service, according to the English Local Government Ombudsmen.

In a new report the Ombudsmen advise that they have become aware of a pattern of excessive delays by some councils in passing appeals about housing benefit on to the Appeals Service; that data collected by the Appeals Service in 2003 indicates that it was taking an average of over 24 weeks for appeals to be referred; and that such delays can be the cause of significant hardship to claimants.

Whilst a period of four weeks has now been set as a national standard within which councils should pass on appeals, the Ombudsmen highlight that, on past performance, some councils have a long way to go to meet that standard.

In consequence the report outlines steps the Ombudsmen consider councils should take to address the situation, including to –

- make sure that all correspondence on review and appeal requests is fast-tracked, and progress on each appeal case is monitored in order to help meet the four-week deadline;

- instigate a system which identifies and gives special priority to those cases where there are particularly difficult personal circumstances, such as a threat of eviction to the claimant;

- maintain frequent – at least monthly – monitoring of numbers and waiting times for appeal submissions;

- develop a properly resourced and practical plan for reducing backlogs speedily where they already exist; and

- make sure that they are not unnecessarily demanding fresh appeals or imposing further conditions before processing appeal requests, or seeking additional information at a late stage; and ensure that all enquiries about an appeal are responded to promptly.

Meanwhile …

The Department of Work and Pensions has announced that Councils who are taking 80 days or more to process housing benefit claims will be inspected by the Benefit Fraud Inspectorate (BFI).

NB – the BFI is an independent unit within the DWP that inspects and reports directly to the Secretary of State for Work and Pensions on the standard of benefit administration and counter-fraud activity in councils and the Department’s operations.

The BFI will aim to make detailed recommendations during these inspections to improve claim processing times in poorer performing councils. These councils will be selected on an on-going basis during 2004 – 2005 based on their quarterly management information returns to the Department for Work and Pensions.
Asylum seekers and benefits

New DWP guidance

The DWP has issued new guidance to local authority Housing Benefit departments in relation to the Home Secretary’s announcement of 24 October 2003 that up to 15,000 asylum seeking families will be allowed to remain in the UK and that, subject to meeting Home Office criteria, will be granted indefinite leave to remain.

The guidance – HB/CTB Circular A10/2004 – advises that for the family to qualify for the concession the applicant must have –

- applied for asylum before 2 October 2000; and
- have at least one dependant in the UK who is aged under 18 years of age and has been living in the UK since 2 October 2000.

The guidance advises that most of these families are currently receiving support and accommodation through the National Asylum Support Service or their local authority, and confirms that on receipt of a positive decision letter from the Home Office they will be able to claim HB/CTB.

NB – Indeed, with indefinite leave to remain the families will have access to all benefits and tax credits.

Interim asylum support scheme extended

The Home Office has announced that local authorities’ responsibilities to destitute asylum seekers under the interim asylum support scheme are to be extended for a further year.

Whilst the scheme, introduced in December 1999, was due to end in April 2004, immigration minister Beverley Hughes has decided that it would be appropriate for the interim period to be extended until 4 April 2005, with the necessary regulations due to be laid before Parliament in March 2004.

Child Maintenance Premium extended

New regulations have been issued that, from 16 February 2004, extend entitlement to the Child Maintenance Premium to those in receipt of ‘voluntary’ maintenance.

The Child Maintenance Premium means that up to £10 of any maintenance paid is disregarded for the purposes of income support and jobseeker’s allowance.

NB – ‘Voluntary’ maintenance means any payment of child maintenance other than a payment made, for example, under a court order or under a maintenance assessment or calculation made under the Child Support Act 1991.

The new regulations also stipulate that separate payments made in respect of different children, or by different people, will be aggregated together and treated as if they were a single payment.

Reform of the Welfare Food Scheme

New rules rolled out from April 2004

The Department of Health has published its response to the consultation on ‘Healthy Start’ – its proposals for reform of the Welfare Food Scheme.

The government’s response confirms that –

- vouchers with a fixed monetary value will replace current volume-based vouchers;
- beneficiaries will be able to exchange the vouchers for liquid milk, infant formula or fresh fruit and vegetables through general retail outlets;
- pregnant women and families with young children will register for the scheme by completing a simple application form and getting it endorsed by a health professional;
- health professionals will continue to have an important role in advising beneficiaries about health and nutrition, including breastfeeding, and in promoting the appropriate use of vitamin supplements; and
- children attending nursery will receive either milk or fruit.

The Department of Health is intending to pilot the Healthy Start scheme in one or more areas from April 2004 before phasing the changes in nationally from the end of 2004.

www.rightsnet.org.uk
the welfare rights website for advice workers