In a new judgment the Court of Appeal has considered the question of whether economically inactive European Economic Area (EEA) nationals satisfy the right to reside test for means-tested benefit purposes.

In Abdirahman v Secretary of State for Work and Pensions – an appeal from the Tribunal of Commissioners decision in CIS/3573/2005 – the claimants were Swedish and Norwegian nationals who had entered the UK, being entitled to do so as EEA nationals, and were living here without having to obtain permission to remain.

However, neither claimant was at the relevant time a worker or otherwise economically self-sufficient and their claims for benefit were rejected on the basis that they did not have a right to reside in the UK.

Dismissing the appeal, the Court of Appeal holds that it is not possible to equate the appellants’ lawful presence within the UK with a right to reside for benefit purposes since neither appellant was a ‘qualified person’ at the relevant time within the meaning of regulation 5 of the Immigration (European Economic Area) Regulations 2000 – ie an EEA national in the UK as, for example, a worker, self-employed person, provider of services, self-sufficient person or student.

In addition, since the appellants were not economically active at the material time the Court of Appeal concludes that neither is there a right of residence based directly on European law as EEC Directive 90/364 provides that ‘beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State’.

Better Off: next steps to full employment – proposes –

- a ‘ground-breaking’ new Jobs Pledge to find job opportunities for a quarter of a million people currently on benefit.

Under the initiative, and building on the Local Employment Partnerships announced in the Budget earlier this year, major employers in the public and private sectors have given a commitment to offer guaranteed job interviews to long-term benefit claimants who are ready and prepared to work.

(continued on page 4 column 1)

The Pensions Bill – that provides for the re-linking of the basic state pension to earnings, and for state pension age to rise gradually to 68 by 2046 – has received Royal Assent.

With the Pensions Act 2007 also reducing the number of years’ national insurance contributions required to qualify for a full basic state pension to 30 for men and women from 6 April 2010 (the current requirement is 39 years for women and 44 for men), the Secretary of State for Work and Pensions Peter Hain said the reforms will particularly benefit women and carers –

‘Many women and carers are currently denied a full pension entitlement because their family and caring responsibilities mean they are not in work long enough to qualify.

This Act provides women and carers with a fair deal, making it easier to balance their responsibilities and recognising their contribution to society as a whole.’

NB – it is expected that around three quarters of women retiring in 2010 will be entitled to a full basic state pension – compared with 35% now, and 50% without reform.

In addition, more than 90% of women and men retiring in 2025 will be entitled to a full basic state pension.
30,000 claimants underpaid benefit due to mismatched DWP and Revenue records

Up to 30,000 claimants may have been underpaid benefit and around 90,000 overpaid due to mismatched records held on DWP and Revenue IT systems.

In a Written Ministerial Statement to Parliament in June 2007, Work and Pensions Minister James Plaskitt said that due to discrepancies between the two IT systems – first noted in the National Audit Office’s report on the National Insurance Fund in February 2006 – some incapacity benefit and state pension credit claimants may be receiving the wrong amount of benefit.

Whilst Mr Plaskitt maintained that the majority of claimants being underpaid may not actually have been receiving less money as any underpayment could have been made up by additional pension credit or income support, in order to ensure that this has been the case the DWP has begun a review to identify all cases of underpayment and will then individually contact those claimants affected.

In addition, the Minister said that, where an overpayment may have occurred, he did not believe that it would be right to recover it as the payment would have been made and received in good faith. As a consequence, the government will introduce regulations that will allow for the continued payment of the benefits at their current level to the individuals concerned for the duration of their claim.

Refugee integration loans & the abolition of benefit backdating

New scheme will target resources more effectively and equitably, says Home Office

With the Home Office having said more than 3 years ago that it was not convinced that allowing those granted refugee status to claim backdated benefit is the right way to help refugees – because ‘it is in their interests to make sure they find work and stand on their own two feet’ – the government has acted to replace the provision with a loan system designed, it says, to be ‘forward looking and assist integration.’

Jointly administered by the Home Office Border and Immigration Agency and the Department for Work and Pensions, the new ‘refugee integration loan scheme’ was introduced earlier this summer and is open to anyone over the age of 18 who has been granted full refugee status or humanitarian protection (or their dependants) on or after 12 June 2007.

NB – For those not in receipt of these benefits, the DWP will recover the loan by, for example, Direct Debit arrangement or regular cheque payments.

However, to fund the new loan scheme, the government has legislated for the abolition, also from June 2007, of refugee benefit backdating since, the Home Office says – ‘… the amount of (the payment) depended on the time spent awaiting a decision rather then need (and) the new scheme will enable the government to target resources more effectively and equitably …’

Despite backdating having been abolished however, refugees will still have contact with the DWP since, whilst the Border and Immigration Agency makes the decision on whether to pay a loan, the DWP is responsible for payment. In addition, recovery will be made by direct deduction from the benefits of those in receipt of income support, income-based JSA or pension credit.

NB – For those not in receipt of these benefits, the DWP will recover the loan by, for example, Direct Debit arrangement or regular cheque payments.

In most cases repayment of the loan will commence six weeks after the funds are released to the individual.

For more information see the Border and Immigration Agency website @ www.ind.homeoffice.gov.uk

Benefit system has an unacceptable amount of ‘dysfunctional complexity’

The benefit system has an unacceptable amount of ‘dysfunctional complexity’ and simplification must be a key priority for the DWP, the Work and Pensions Committee has said.

In a new report, the Committee notes that the DWP administers around 40 benefits, allowances and grants many of which have different eligibility criteria and governing rules and that the introduction of tax credits has added a further layer of complexity.

However, whilst acknowledging that the DWP has established a Benefit Simplification Unit (BSU) which has produced a simplification guide for staff involved in policy making, the Committee says that – ‘... the BSU is reactive, concentrates on proposals for new policies rather than systematically reviewing the existing structure, and is under-resourced, having only four full-time staff.

Different DWP Ministers are responsible for better regulation, welfare reform and simplification and there is no systematic attempt to address the combined and overlapping complexities of the benefits and tax credits systems.’

The piecemeal approach taken so far is ‘nibbling at the edges’ of the system the Committee says, and the government therefore needs to consider the case for more radical reform such as the development of a single working age benefit.

In addition, the Committee proposes that the government should establish a Welfare Commission to review whether all existing benefits are necessary; whether some benefits could be merged; the interaction between benefits and how the qualifying arrangements differ; and the overall purpose of the benefits system.

The Work and Pensions Committee’s report on benefit simplification is available @ www.publications.parliament.uk
HB sanctions following eviction for anti-social behaviour

New rules in pilot areas from November 2007

New regulations have been issued that provide for eight local authorities in England to establish pilot schemes later this year where those evicted for anti-social behaviour who refuse to accept support offered to tackle that behaviour will face housing benefit sanctions.

NB – as reported in review 123, the pilots will be operated by local authorities in Blackburn, Blackpool, Dover, Manchester, the New Forest, Newham, South Gloucestershire and the Wirral.

In force from 1 November 2007, the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007 (SI.No.2202/2007) implement Section 31 of the Welfare Reform Act 2007 that creates a pilot scheme for the sanction of housing benefit where a ‘former occupier’ has –

- been evicted on grounds of anti-social behaviour;
- secured alternative accommodation and made a new claim for housing benefit;
- been issued with a warning notice requiring them to take specified action to avoid a benefit sanction; and
- failed without good cause to comply with the warning notice.

In these circumstances, housing benefit will be reduced by 10% for four weeks, by 20% for the next four weeks, and then by 100% until the end of the (two-year) pilot period.

NB – if the person is ‘in hardship’ – for example is pregnant; is aged less than 18 or over 59; is responsible for a child; is in receipt of attendance allowance or the middle or higher rate of the care component of DLA or devotes a considerable portion of each week to caring for such a person – the maximum reduction will be 30%.

Once sanctioned a person can bring the sanction to an end at any time by complying with the warning notice and taking up the offer of support, and the local authority also has the discretion to bring the sanction to an end if it considers that it should no longer apply.

However, if the person initially cooperates then stops doing so, then the sanction can be restarted at the rate it had been applied at before.

‘Health care professionals’ to carry out DLA/AA and incapacity benefit medicals

New regulations have been issued that provide for a variety of health care professionals, in addition to registered doctors, to be able to undertake medical examinations and provide reports for benefit purposes.

In force from 3 July 2007, the Social Security (Miscellaneous Amendments) (No.2) Regulations 2007 (SI.No.1626/2007) are consequential upon section 62 of the Welfare Reform Act 2007 that provides for annual assessment and review 123

- a registered medical practitioner;
- a registered nurse;
- a registered occupational therapist or physiotherapist; or
- a member of such other regulated profession as prescribed.

The government hopes that the use of a broader range of health care professionals will contribute to improvements in the administration of incapacity and disability benefits by increasing the availability of resources and providing, where needed, particular skills and experience.

Government to do ‘everything it can’ to reduce tax credit errors

The government needs to do ‘everything it can’ to reduce errors in the tax credit system, Chancellor of the Exchequer Alistair Darling has said.

Speaking in the Commons last month, the Chancellor said that he can well see how errors arose following the introduction of the tax credit system – especially with a system that allows for annual assessment and when there are many families whose incomes and circumstances may change quite a lot during that period – but that the basic proposition behind tax credits is right.

However, agreeing that such high levels of error are unacceptable, the Chancellor said that the problem needs to be, and will be, sorted out -

'I think that the level of error is too high and I want to see it reduced. That will take time, as I know from my experience in dealing with job-seeker’s allowance eight or nine years ago.'

However ... those error rates, which had stood at 13% ... came down to 5%, and we must apply the same pressure in relation to tax credits.'

NB – on the same day, the National Audit Office (NAO) announced that, for the fifth consecutive year, it had given only qualified approval to the Revenue’s accounts because of ‘unacceptably high’ levels of tax credit fraud and error.

In its report on the Revenue’s accounts for 2006/2007, the NAO highlighted that whilst tax credits worth £18.7 billion were paid to 5.5 million families during the year, overpayments arising from adjustments to awards and other changes to entitlement after the finalisation of awards have led to a debt of £6 billion having accumulated since the introduction of tax credits in 2003, of which £0.7 billion has been written off and £3.9 billion remains uncollected.
Green Paper signals ‘step change’ in back to work support

(continued from page 1 column 3)

- moving away from the rigid distinctions of the current New Deals between age groups, through the introduction of a new, flexible, personalised approach for more disadvantaged claimants, with help focused more on retention and progression in work.

The Green Paper proposes that Jobcentre Plus personal advisers will offer more intensive support at appropriate points in the claim and offer specialist providers more discretion over providing more flexible support according to individual needs.

- a new social contract for lone parents which promotes the value of work as the best route to tackle child poverty.

Under the proposals, from October 2008 lone parents whose youngest child has reached the age of 12 will no longer be entitled to income support simply because they are a lone parent. Instead they will be required to claim jobseeker’s allowance and will be expected to look for suitable work in return for tailored, personalised help and support that reflects the specific circumstances they face. The new rules will be extended, from October 2010, to those whose youngest child has reached the age of seven.

- much greater use of expertise across the private, public and voluntary sectors at both national and local level, allowing Jobcentre Plus to focus on where it adds the greatest value.

Building on the recommendations in the Freud Report, the government proposes that whilst Jobcentre Plus has a particularly key role to play in providing job search advice and motivation during the early part of someone’s claim, those on benefit for longer periods may be better served through specialist support which could be provided by the public, private or third sector, depending on what works.

Welcoming the Green Paper, Secretary of State for Work and Pensions Peter Hain said that the reforms –

‘...offer a step change in our approach with new support matched by new responsibilities. Those facing particularly severe barriers to work will now get fast-tracked help. Others who have a history of long-term benefit dependency could face tougher responsibilities from the start of their claim. And our reforms will not just be about getting people into work – job retention and progression are the new standards against which the success of welfare policy will be judged.’

Consultation on the proposals closes on 31 October 2007.

‘In Work, Better Off: next steps to full employment’ is available @ www.dwp.gov.uk/welfarereform

Child benefit for 19 year-olds continuing in education

New regulations have been issued that widen the definition of ‘qualifying young person’ for the purposes of entitlement to child benefit to reflect the fact that young people are increasingly undertaking a third year of non-advanced study or training.

NB – whilst reforms introduced in April 2006 allow for support to continue until a young person either completes their course of approved training or full-time, non-advanced education or they reach age 20, entitlement beyond the date the young person reaches age 19 is subject to the requirement that they commenced their course before that date.

To remedy this, from 16 August 2007 the Child Benefit (General) (Amendment) Regulations 2007 (SI.No.2150/2007) provide for a young person who has previously been in continuous education or training and who has been offered a place on, or enrolled to undertake, a further year of non-advanced study which does not commence until after the date of their nineteenth birthday, to continue to be treated as a qualifying young person for the purposes of entitlement to child benefit.

In addition, corresponding changes are made to child tax credit from the same date by the Child Tax Credit (Amendment) Regulations 2007 (SI.No.2151/2007).

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