

Freedom of Information request 711/2011

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Information requested:

I understand that, very shortly, the UK government will be obliged to pay unemployment benefit to yet more migrants from countries within the EU, including Bulgaria and Romania.

I should be grateful to know whether such migrants require any particular qualifications in order to begin receiving unemployment benefits.

To what extent do they need to demonstrate a working knowledge of the English language?

How long do they have to be in the UK before being able to claim benefits?

DWP response:

Payment of unemployment benefit for migrants within the EU is decided by EU rules that coordinate the social security rights of people who move within the European Economic Area (EEA) and Switzerland. These rules are intended to help with free movement between Member States and apply equally to UK nationals who seek work in another Member State. For the UK 'unemployment benefit' in this context means contribution-based Jobseeker's Allowance (JSA).

Under these rules, a person who comes to the UK and works and pays national insurance contributions can be entitled to contribution-based JSA. In certain circumstances unemployment insurance paid in another Member State can be taken into account but this would normally only apply if the person has worked in the UK but has insufficient contributions to qualify for JSA. The normal requirements concerning availability for and actively seeking work must also be met.

There are separate rules for out of work income-related benefits such as income-based JSA, Housing Benefit and Council Tax Benefit. Under these rules everyone, including UK nationals and people who come from the EEA, who claims one of these benefits is subject to the two part Habitual Residence Test. This is in addition to the normal conditions of entitlement which do not include a requirement to have any particular educational qualifications. The first part of the test is the 'right to reside' element.

EEA nationals, for example, have a right to reside whilst they are working. People who do not have a right to reside will not be entitled to any income-related benefits. EEA nationals with 'worker status', for example those who are working, are eligible for in-work income-related benefits such as Housing and Council Tax Benefit whilst they are in work. If they stop working but are seeking work they are also eligible for income-based JSA. Inactive EEA nationals, that is, people who are neither in work or seeking work, cannot generally access income-related benefits.

Once a person has satisfied the 'right to reside' part of the test, they will then generally have to satisfy the second part of the test by demonstrating that they are as a matter of fact habitually resident here. The term 'habitual residence' is not defined in social security legislation. This means that each case is treated on its own merits and in the light of the person's individual circumstances. However, based on UK case law, it is possible for factual habitual residence to be demonstrated within one to three months.

In considering actual habitual residence, decision makers, who decide entitlement to benefit, consider a wide variety of factors. As well as the time resident in the UK, these factors also include the reasons for coming to the UK, their future intentions, previous links to the country and in the case of people returning to the UK, the reasons for their absence.

Special arrangements apply to nationals of the A8¹ countries. The Accession Treaty permitted Member States to place temporary restrictions on the access A8 nationals could have to their labour markets. In the UK those restrictions also meant that A8 nationals did not have exactly the same residence rights as other EU nationals and consequently that they could not generally acquire entitlement to income related benefits. Under the terms of the Treaty, those restrictions on A8 nationals have to be lifted from 1 May 2011, after being in operation for seven years. From 1 May 2011, therefore, A8 nationals will have the same access to the UK labour market and benefit system as nationals of other, longer established EEA member states.

A2 nationals, people from Bulgaria and Romania, will still be subject to transitional arrangements under the Accession Treaty after 30 April 2011. A2 nationals are eligible for in-work Housing Benefit and Council Tax Benefit whilst they are working, providing they are authorised under the 'Worker Authorisation Scheme'. If they stop working, they may be eligible for income-based JSA, but only if they have been working and authorised under the Scheme for at least 12 months, and are seeking work.

In response to your last point, there is currently nothing in place to test understanding of the English language for anyone, including UK nationals before they are allowed to receive benefits as this is not a condition of benefit entitlement.

¹ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

We are committed to ensuring that the rules governing the payment of benefits to people from abroad are kept under review. We need to make sure that the rules which apply when people from the European Union come to the UK do not allow people to take inappropriate advantage of our benefit system.

This Government has also made it clear that it will apply transitional controls for all new EU Member States as a matter of course in the future.