

Housing Benefit and Council Tax Benefit

Urgent Bulletin

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Who should read	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
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EU Accession: Bulgaria and Romania

This bulletin should be read in conjunction with **HB/CTB Circular A9/2006**.

Background

- 1 Bulgaria and Romania will join the European Union (EU) from 1 January 2007 and the UK labour market will open gradually from that date. In October 2006 the Home Office announced that access to the labour market would be restricted so that, in general, only highly skilled workers or people who are already working legally in the UK on 31 December 2006 will be able to work freely in the UK, see paragraphs 9-10 for more information about these groups. Other A2 nationals including skilled workers, will be required to be authorised to work in the UK before starting work.
- 2 The Home Office regulations made on 13 December 2006 include details of a new work permit scheme which will limit the number of A2 nationals allowed to work in the UK. This scheme will be known as the **Worker Authorisation Scheme (WAS)**, see paragraphs 4-5 for more information about the scheme.
- 3 From 1 January 2007 the term 'A2 nationals' refers to Bulgarian and Romanian nationals and will no longer be used for nationals of Malta and Cyprus.

Worker Authorisation Scheme

- 4 Workers from Bulgaria and Romania must, except where they are exempt from the requirement, obtain a work authorisation document before they commence employment in the United Kingdom. Those qualifying for such a document will generally be those skilled workers who meet the criteria for the issue of a work permit under the existing work permit arrangements.
- 5 However, work authorisation documents will also be issued to lower skilled workers coming to undertake approved seasonal agricultural work and employment in the food processing sector.

Accession Work Cards

- 6 Workers not exempt from the requirement to seek permission to work will need to hold an **accession work card** or a **Seasonal Agricultural Workers Scheme (SAWS)** work card in order to be legally employed in the United Kingdom. An accession work card will be issued in respect of a specific job with a specific employer, provided that relevant qualifying criteria are met. Employment cannot commence prior to the accession work card being issued. If the holder of an accession work card wishes to change employment, they will need to obtain a new accession work card for that employment.
- 7 Accession work cards will also be issued for
 - skilled jobs that meet the current criteria for the issue of a work permit, and
 - lower skilled jobs in the food processing sector where the existing criteria for the issue of a Sectors Based Scheme permit are met

- 8 In these instances the employer will first need to apply for a document confirming that these criteria have been met. Once the employer has been issued with a letter of approval confirming that these criteria have been met, the worker will then be required to make an application for an accession worker card.

Persons exempt from a requirement to obtain a Accession Work Card

- 9 Those people who will be exempt from the requirement to obtain a work authorisation document if they intend to take employment in the United Kingdom will be able to obtain a registration certificate confirming their status post accession if required. They include:
- those with permission to work by means of a work permit or leave to remain giving permission to work in the UK on the date of Accession
 - those who are the spouse or civil partner of a British citizen or a person settled in the UK
 - those who are highly skilled and are in possession of a registration certificate confirming that they have unrestricted access to the labour market. Those falling into this category will be those who meet the existing criteria for admission under the Highly Skilled Migrants Programme, the Science and Engineering Graduates Scheme and the Scottish Graduates Scheme
 - students who intend to work less than 20 hours a week and are in possession of a registration certificate confirming that he or she has this restricted permission to take employment, see also paragraph 13
 - any Bulgarian or Romanian national who has been given permission to work, and has worked under that permission for a continuous basis of twelve months obtains full movement rights as a worker under EU law. They are then exempt from a requirement to obtain a worker authorisation document
- 10 Persons working for twelve months or more lawfully can obtain a registration certificate confirming unrestricted right to access UK labour market.

Spouse/Civil partners of Romanian and Bulgarian nationals

- 11 Where a person is a national of Bulgaria and Romania, and is the spouse of a person holding a registration certificate restricting their access to the labour market (for example, the spouse of a student or self-employed person) or a person holding a work authorisation document, they too will be required to obtain an accession work card in order to take employment in the UK. However, the criteria for the issue of such a document to a dependant spouse in these circumstances will not be subject to a skills test.

Self-employed persons

- 12 A2 nationals have a right of establishment under EU law as a self-employed person. Any person engaged in self-employment must have registered their business activities with Her Majesty's Revenue and Customs (HMRC) and be able to show they are paying appropriate national insurance contributions.

Students

- 13 Students will be allowed to work but must first obtain a registration certificate. This will confirm that the Home Office accept them as a European Economic Area (EEA) national exercising a treaty right as a student and will provide them with permission to work for up to 20 hours a week. Yellow Registration certificates will only be issued to those people studying at genuine educational establishments included in the Department of Education and Skills (DfES) Register of Education Providers.

Benefit access

Highly skilled migrants

- 14 A2 nationals who are highly skilled migrants have unrestricted access to the UK labour market. Highly skilled migrants will be able to claim income-based Jobseeker's Allowance and, if in receipt of that benefit, Housing Benefit (HB) and Council Tax Benefit (CTB) while they look for work as they are treated as full EEA nationals. Highly skilled migrant work seekers will have a right to reside but will need to show that they are habitually resident. They are unlikely to be entitled to Income Support or State Pension Credit because, since 30 April 2006, a claimant with an EEA work-seeking right to reside alone will not satisfy the right to reside aspect of the habitual residence test for those benefits.
- 15 Highly skilled migrant workers are exempt from the habitual residence test.
- 16 Highly skilled A2 nationals will need to provide the following documents to confirm their status
- valid passport, or
 - ID card, and
 - blue registration certificate annotated to say that they have full access to the UK labour market

Skilled migrants

- 17 Skilled workers who are not exempt from the WAS are allowed to work in the UK once they have been authorised by the Home Office to work for a particular employer. The employer will have to show that there is a skill shortage and that there is nobody else to do the job. If they are on a low income they may be able to claim HB and CTB. While they are working they are exempt from the habitual residence test. If they stop working before completing 12 months authorised employment they will no longer have a right to reside as a worker.
- 18 If they are temporarily sick or incapacitated they will retain their worker status if they are still employed so are exempt from the habitual residence test. However, if they leave their job as a result of sickness or incapacity they will lose their right to reside as a worker and will be unlikely to be eligible for any income-related benefits.

- 19 Skilled migrants will need to produce the following documents to prove that they are working legally in the UK
- valid passport, or
 - ID card, and
 - a purple accession work card

Skilled migrants – post 12 months

- 20 Once a skilled worker has accessed the UK labour market for 12 months they will gain full EEA worker status and will no longer need permission to work in the UK. They will, on request, be issued with a blue registration certificate annotated to show that they have unrestricted access to the UK labour market. If they become unemployed they will retain their worker status in circumstances in which other full EEA workers can retain that status. They may be entitled to income-based Jobseeker's Allowance (JSA(IB)), HB and CTB. They are exempt from the habitual residence test if they have retained their worker status.
- 21 Skilled migrants will need to produce the following documents to prove that they have legally worked in the UK for 12 months
- valid passport, or
 - ID card, and
 - Blue registration certificate

Low skilled workers

- 22 A2 nationals who are not exempt from the WAS and who want to work under the sector based scheme in food processing or under SAWS (see **Annex A** for a list of the nine SAWS operatives) will need to apply for permission to work before starting work. A2 nationals employed under SAWS will only be allowed to work for six months at a time and must have a break of three months between employment spells under SAWS. During this break they will be allowed to stay in the UK if they are self-sufficient but will not be entitled to claim any income-related benefits as they will lose their EEA worker status.
- 23 A2 nationals who are not exempt from the WAS and who are employed in food processing will be allowed to work for up to 12 months for one employer. They can also change employers subject to Home Office approval during this period but are not required to have a break between employment spells.
- 24 While they are working legally, low skilled A2 nationals will be able to claim HB and CTB if they are on a low income. They are exempt from the habitual residence test while they are working and must produce the following documents to confirm their status
- valid passport, or
 - ID Card, and
 - a purple accession work card for the sector based scheme, or
 - a SAWS card which states the dates of employment and name of the farm employing the A2 national

Low skilled workers – post 12 months

Sector based scheme

- 25 Low skilled workers who are employed under the sector based scheme in food processing will gain full EEA worker status once they have completed 12 months as an authorised worker. They will be issued with a blue registration certificate annotated to show that they have unrestricted access to the UK labour market. If they lose their employment they will retain their worker status if they remain in the labour market and can claim JSA(IB), HB and CTB. They will be exempt from the habitual residence test if they have retained their worker status.
- 26 Low skilled workers who have completed 12 months authorised employment (breaks of up to 30 days will not affect the 12 month qualifying period) must provide the following documents to confirm their status
- valid passport, or
 - ID Card, and
 - blue registration certificate

SAWS

- 27 A2 nationals who are employed under SAWS will not gain full EEA worker status as they are only allowed to work for six months with three month break between employers so cannot accrue a continuous period of 12 months employment.

A2 nationals not subject to restrictions (see also paragraph 9)

- 28 As well as Highly skilled A2 nationals and those who have worked pursuant to the WAS for a 12 months period, there are some other A2 nationals who do not need permission to work in the UK and have unrestricted access to the UK labour market. They will need to apply for a blue registration certificate to confirm this right. They will be treated the same as non-A8 EEA nationals (see **paragraphs 37-46 of HB/CTB circular A9/2006** for more information). A2 nationals included in this group are those who
- had leave to enter or remain which allowed them to work freely
 - were working legally in the UK on 31 December 2006 and had been working legally in the UK without interruption for 12 months ending on that date
 - are also a UK national or an EEA national (other than a national of Bulgaria or Romania)
 - are a spouse or a civil partner of a UK national or of a person settled in the UK
 - are a family member of an EEA national with a right to reside in the UK under the Home Office EEA Regulations unless the EEA national is an A2 national subject to worker authorisation or is an A2 national who falls within the student exemption to the WAS
 - are a student, who does not work more than 20 hours a week and holds a yellow registration certificate (see paragraphs 13 and 36)
 - who is a posted worker

- 29 A2 nationals who fall into the above group will need to provide the following documents to confirm their status
- valid passport holding a UK residence permit granting leave to remain with permission to work (that has not expired), or
 - valid passport with an indefinite leave to remain stamp, or
 - valid passport holding a 'no time limit stamp', or
 - an ID card, and
 - blue registration certificate annotated to say that they have full access to the UK labour market, or
 - yellow registration certificate in the case of a student

A2 nationals already working legally before 1 January 2007

- 30 An A2 national who was working legally (with leave to enter or remain subject to a condition restricting his or her employment in the UK to a particular employer or category of employment) on 31 December 2006 and is not exempt from the WAS, is not required to apply for authorisation as their work permit is treated as an accession worker card. Although they are not required to apply for an accession worker card they do not have unrestricted access to the UK labour market until they have completed 12 months uninterrupted employment. If they are on a low income they can apply for HB and CTB and are exempt from the habitual residence test.
- 31 A2 nationals who are in this group will need to confirm their status by supplying a valid passport holding a UK residence permit granting leave to remain with permission to work that has not expired.

Self-employed people

- 32 A2 nationals who are working in a self-employed capacity are treated in the same way as other EEA nationals who are self-employed and will be able to claim HB and CTB if they are on a low income while they are working. If they stop working as a self-employed person they will generally only have a right to reside if they are self-sufficient as they will be subject to the worker authorisation scheme unless they fall within an exemption.
- 33 Self-employed A2 nationals will need to supply the following documents to confirm their status
- valid passport, or
 - ID Card, and
 - a current CIS card (if employed in the construction industry), or
 - a letter from HMRC showing their tax reference, and (if available)
 - a copy of their business accounts

A2 work seekers

- 34 A2 nationals who have come to the UK to look for work will not have work seeker status unless they have unrestricted access to the UK labour market as detailed in paragraphs 15-16 (Highly skilled migrants) or paragraphs 19-20 (A2 nationals not subject to restrictions). This means that most A2 nationals must be self-sufficient while they look for work and are unlikely to be entitled to income-based Jobseeker's Allowance, HB and CTB.

Economically inactive A2 nationals

- 35 Economically inactive A2 nationals for example lone parents or retired people can come to live in the UK in the same way as other EEA nationals. They have a right to reside here if they are self-sufficient and are unlikely to be entitled to income-related benefits. Please see paragraphs **51-52** of **HB/CTB Circular A9/2006** for more information about this group.

Students

- 36 A2 nationals who come to the UK to study are allowed to work for up to 20 hours a week and are not required to apply for an accession worker card. However, they are treated in the same way as students from other EEA countries. Their right to reside requires them to declare that they are self-sufficient and they are unlikely to be entitled to JSA(IB), Income Support (IS), HB or CTB. For information about students see **paragraphs 54-55 of HB/CTB Circular A9/2006**.

SAWS operators

Details of the nine SAWS operators are below. All applications for SAWS work are made to the operator direct.

Concordia Ltd (YSV) – recruits on behalf of farmers throughout the UK

HOPS Labour Solutions – recruits on behalf of farmers throughout the UK

Friday Bridge International Farm Camp – recruits on behalf of farmers in the North Cambridgeshire area only

Sastak Ltd – recruits on behalf of farmers in the Shropshire & Staffordshire areas only

Barway Services Ltd – recruits to meet their own demand for seasonal labour in Cambridgeshire

Haygrove Ltd – recruits to meet their own demand for seasonal labour only in Herefordshire

R&J M Place Ltd (International Farm Camp) – recruits to meet their own demand for seasonal labour only Norfolk

S&A Produce (UK) Ltd – recruits to meet their own demand for seasonal labour only in Herefordshire

Wilkins & Sons Ltd (International Farm Camp) – recruits to meet their own demand for seasonal labour only in Essex