

Migrant Workers

Social services duties to provide accommodation and other services



Introduction

This briefing explains the duties of health and social services towards migrant workers and members of their families.

The Law Centre's community care advisers will be happy to advise and take referrals from member organisations in this complex area of law.

1. Background

A migrant worker is someone from outside the United Kingdom and Ireland who is here to seek or take up work.

The number of migrant workers has increased over the past few years and it is likely that there will be a greater number seeking social services support in the form of community care services.

Community care services are care services that are arranged or provided by the social services departments for vulnerable groups in society. Community care services can range from the provision of ordinary accommodation as well as residential or nursing home accommodation to domiciliary services such as personal assistance, home help, respite care, holidays, daily living equipment, home adaptations, meals on wheels, day centres, recreational facilities etc.

This briefing will focus on the role of social services in relation to migrant workers who are in need of services and the legal basis for a trust's duties and powers in relation to the provision of those services. Trusts should also be aware that migrants can be present in the UK in another capacity (eg student, self employed, married person, job seeker, retired workers). Where such individuals require assistance, are advised to contact the Law Centre for specialist advice. The briefing will also consider the responsibilities of the Northern Ireland Housing Executive (NIHE) as the main provider of social housing as this will have an impact on the role of the trust in the provision of services.

Social services departments' duties to provide personal social services to individual migrant workers will be dependent upon the category into which the migrant worker falls. Trust staff should therefore be aware of those categories. The categories of migrant worker you are likely to encounter are as follows.

2. European Economic Area nationals

The European Economic Area (EEA) is the 25 countries of the European Union including Iceland, Liechtenstein, Norway and Switzerland by special arrangement (see Appendix 1 for a full list).

Nationals of these countries are not subject to immigration control providing they are exercising treaty rights as workers, self-employed persons, providers or recipients of services, students or business people. Those who have ceased work through retirement or permanent incapacity retain their status as a worker. These people are generally entitled to access benefits and services on the same basis as UK nationals providing they meet the relevant eligibility criteria for those benefits and services (including social housing).

EEA nationals exercising any one of the above rights of free movement are entitled to be accompanied by family members who also benefit from these free movement rights. This rule applies even where the family member is a non-EEA national.

3. The new European Union states

3.1 A8 nationals

Since 1 May 2004, workers from the new EU member states have been free to come to the UK and access the UK labour market. Maltese and Cypriot nationals have full freedom of movement rights and are not required to register as workers. In accordance with the Accession (Immigration and Worker Registration) Regulations 2004, nationals from the eight Eastern European states, (A8) are required to register employment with the Home Office through the Worker Registration Scheme (WRS) within one month of starting work in order to be working legally in the UK.

The A8 states are: Poland, Lithuania, Estonia, Latvia, Slovenia, Slovakia, Hungary and the Czech Republic. After twelve months of working continuously in registered employment, A8 nationals will acquire full rights of free movement.

During the first twelve months of work, A8 nationals covered by the arrangements outlined above are eligible for certain in-work benefits, for example tax credits and, if they are on low income, they may also be entitled to Housing Benefit. Other benefits payable when a person becomes unemployed become available after 12 months in continuous registered employment.

3.2 A2 nationals

On 1 January 2007, nationals of Bulgaria and Romania (A2) joined the EU. People from these countries have many of the same rights as other EEA nationals but with some restrictions. A2 nationals have limited access to the UK labour market. The Worker Registration Scheme will not apply to these nationals. Bulgarians and Romanians do not have a right to reside as a worker unless they have permission to do so under the Home Office's Worker Authorisation Scheme. Skilled workers will continue to be permitted to come into the UK on work permits: those with particularly high levels of skill (eg doctors, engineers) will continue to be admitted under the Highly Skilled Migrants Programme.

The Worker Authorisation Scheme only applies to new workers entering the country from Bulgaria and Romania. The requirement to register under the schemes ends when a Bulgarian or Romanian national has been legally employed in the UK on a continuous basis for twelve months.

During the first twelve months of work, A2 nationals covered by the arrangements outlined above are eligible for certain in-work benefits, for example tax credits and, if they are on low income, they may also be entitled to Housing Benefit.

4. Helping someone to obtain other benefits (including out of work benefits)

For the purposes of qualifying for other social security benefits (including out of work benefits) EEA nationals who are exercising treaty rights in the UK should be encouraged to request a Registration Certificate from the Home Office as confirmation of their right of residence under EC law. Equally, once an A8 or A2 national has completed twelve months or more under the Worker Registration Scheme or the Worker Authorisation Scheme, he or she may be entitled to further social security benefits (including out of work benefits). Social services should encourage these individuals to apply for a Registration Certificate as this may help to show that they have a right of residence should they need to claim further social security benefits.

5. Nationals of all other countries under the Work Permit Scheme

The government has decided to end most of the schemes available to non-EEA nationals who wish to come to the UK to work.

The new system of non EEA migration is expected to come into force by January 2009. Under the new scheme, the individual will apply for leave to enter or remain under one of the following tiers: highly skilled, skilled, temporary low skilled and specialist temporary workers, trainees and students.

The original Sector Based Scheme (SBS) arrangements allowed employers in this country to recruit people from

outside the EEA to fill vacancies that they were unable to fill with resident workers. Where these permit holders are still employed in the UK they retain their rights to extension and change of employment applications within the original criteria of the SBS route.

Due to European agreement, nationals of Turkey, Croatia and Macedonia are entitled to Housing Benefit, homelessness assistance and to access the housing selection scheme if they pass the habitual residence test and are legally present in Northern Ireland.

6. Entitlement to housing and homelessness assistance

All three categories of migrant worker can access the private rental market in Northern Ireland and have the same statutory rights as UK citizens.

Where a migrant worker becomes homeless it is important to know what entitlement a worker has to Housing Executive assistance.

6.1 EEA nationals and A8 and A2 workers

Article 137 of the Housing (NI) Order 2003 has inserted a new article, 7 (A) into the Housing (NI) Order 1988 which provides that a person is ineligible for homeless assistance if he or she is not habitually resident and has no right to reside.

EEA nationals are exempt from the habitual residence test provided they are in Northern Ireland in exercise of their treaty rights, ie to work, and also have a right to reside. Therefore the duties of the NIHE towards EEA nationals who become homeless are governed by the Homelessness Regulations (NI) 2004 (the 2004 Regulations) in the usual way.

Under the 2004 regulations, EEA workers are entitled to emergency assistance from the NIHE should they become unintentionally homeless. The term homelessness has a broader meaning than purely not having accommodation. It can also apply where a person is living in accommodation which it is not reasonable to live in, for example accommodation in a state of serious disrepair or in overcrowded accommodation.

An EEA national who is homeless is entitled to an assessment from the NIHE to determine whether or not the person is unintentionally homeless, eligible for assistance and in priority need (for example, pregnant, has dependent children, or has a mental or physical health problem). If a person is deemed to be unintentionally homeless and in priority need, the NIHE has a duty to provide temporary accommodation until it can allocate suitable housing.

A8 workers who are registered under the WRS or who have worked in registered employment for twelve months without interruption are also covered by the 2004 regulations. The NIHE will have a duty to provide an A8 national who is unintentionally homeless and in priority need with temporary accommodation until it

can provide suitable housing. A8 nationals who are not registered under the Home Office Worker Registration Scheme (and who need to do so) or are workseekers are ineligible for homelessness assistance.

The 2004 regulations specify that A2 workers exercising treaty rights to work are also exempted from the habitual residence test for the purposes of entitlement to housing and homelessness assistance.

6.2 Sector Based Workers and Work Permit Holders

Generally a person in either of the above categories of worker who is homeless cannot be allocated accommodation by the NIHE. This is because workers on these schemes are required to have no recourse to certain public funds (for a full list of public funds see Appendix 4). However, if a person in this group is vulnerable, for example by reason of ill health, or has dependent children, the NIHE is under a duty to provide temporary accommodation (for example, pay for hostel accommodation) until it has checked the individual's immigration status (Article 8 Housing (NI) Order 1988).

Beyond this the NIHE is not permitted to allocate accommodation. What it must do in accordance with Article 11 of the 1988 Order is, as far as possible, give advice and assist the person to find alternative accommodation. It might therefore help an individual to find other private rented accommodation or help to arrange temporary hostel accommodation.

Sector Based Workers and Work Permit Holders can also contact the duty social worker in their local trust area to ask for assistance with finding or paying for accommodation.

7. Entitlement to social services support

Only some people are excluded from receiving social services support and even then, the trusts will still have some powers to provide assistance by way of accommodation / subsistence where a failure to do so would lead to a breach of an individual's human rights.

7.1 Trusts' powers under the Nationality, Immigration and Asylum Act 2002 (Schedule 3, paragraph 1)

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002) prohibits social services departments from using various provisions (including the Health and Personal Social Services (NI) Order 1972 and the Children (NI) Order 1995) to support certain categories of migrants, described in the legislation as 'classes of ineligible persons'.

7.2 The child exception

The NIAA 2002 does not restrict the power of a trust to provide support or assistance in respect of a minor. Therefore children of EEA nationals, including children of A8/A2 nationals and non EEA nationals are entitled to receive services under the Children Order 1995 and/or the Health & Personal Social Services (Northern

Ireland) Order 1972 (NIAA 2002 Schedule 3, paragraph 2 (1)(b).

The duty placed on trusts to meet the needs of children in its area may result in a situation where a trust must provide accommodation to a child and his or her family, despite the fact that the other members of the child's family are excluded from receiving services by virtue of Schedule 3 NIAA 2002.

7.3 The exception in Paragraph 3 (b): provision of community care services to those people exercising Treaty Rights

Schedule 3, paragraph 3 of the NIAA 2002, however, also introduces exceptions to the general restriction on accessing community care services for non-nationals set out in paragraph 1 of Schedule 3.

Paragraph 3 (b) allows a trust to exercise a power or perform a duty to an EEA national who is exercising treaty rights as an EEA national by working, self-employment or giving or receiving services. Such individuals are entitled to be assessed for and if appropriate receive community care services to meet assessed need under the community care legislation.

The same applies to A8 and A2 nationals who are registered as workers or who have applied for registration or who have been in registered employment for twelve months without interruption and no longer need to be registered as they are deemed to be exercising their treaty rights and so fall within the exception in paragraph 3 (b).

7.4 The human rights exception

Schedule 3 of the NIAA 2002 will only prohibit a trust from providing support and accommodation under the relevant community care legislation (namely the HPSSO 1972) where those individuals are no longer exercising treaty rights (eg as a worker, self-employed, student, work seeker) or in the case of those individuals present in the UK on the SBS or WPS, where they are no longer fulfilling the conditions of their leave to enter. However, trusts are nevertheless able to provide support to such individuals by virtue of the exception in Schedule 3 paragraph 3 (a) which requires a trust to exercise a power or discharge a duty in respect of those persons if it considers it necessary to avoid a breach of their human rights under the European Convention on Human Rights (ECHR).

Services in this context may also include the provision of emergency accommodation and subsistence. Under Schedule 3, paragraphs 8, 9 and 10 a trust may provide accommodation and support pending the return of the person to his or her member state.

The Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 (the 2002 regulations) is additional secondary legislation outlining the circumstances in which a trust may exercise its powers to make arrangements for:

- (a) nationals of other EEA member states; and
- (b) those with refugee status in another EEA member state

to travel back to that member state.

No arrangements may be made in respect of failed asylum seekers and those unlawfully present in the UK - responsibility for making travel arrangements for these groups of persons rests with the Border and Immigration Agency.

By virtue of paragraph 11 (e) of Schedule 3 to the 2002 Act, trusts should have regard to the guidance set out in paragraphs 31-50 when determining how to make these arrangements. [See Nationality Immigration and Asylum Act 2002 Schedule 3 and the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations Guidance to Local Authorities and Housing Authorities issued by the Home Office.]

Under the guidance, the trust can make practical arrangements to accommodate people who are homeless where a failure to do so might lead to a breach of their human rights. For example, in the case of a person who is destitute and living on the streets it could be argued that failure to accommodate and provide support in this instance is a breach of their right to respect for private and family life under Article 8 of the Human Rights Act 1998. A trust would not be breaching Article 8 if it were to arrange and pay for accommodation to enable the individual to be accommodated and receive other social services support.

Additionally, trusts may make travel arrangements by purchasing flights etc to enable a person and their family to return to their member state.

Conclusion

The categorisation of migrant (EEA nationals, A8, A2 nationals, Sector Based Workers/Work Permit Holders) will directly impact upon a migrant worker's entitlements to benefits, social housing and social services support. Social services staff must ensure decisions about whether or not to provide support do not otherwise result in a breach of the applicant's human rights. Otherwise a trust may find that its decision is susceptible to challenge by way of judicial review.

In addition to providing the normal range of community care services such as supporting a person at home, access to respite, day care and residential/nursing home care, social services may also provide financial assistance to migrant workers and their families by funding hostel accommodation, paying rent to a private landlord and providing subsistence payments to a migrant worker where he or she has no other means of support. Social services may also undertake the community care assessment in respect of persons with a disability with a view to identifying need for services.

For any queries arising from the briefing, please contact the community care unit of the Law Centre on the advice line or, in individual cases, please feel free to refer a client directly.

Appendix 1

List of the 25 EEA countries

Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, UK.

Appendix 2

Entitlement to homeless assistance and benefits

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Appendix 3

Entitlement to trust services

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Appendix 4

Public funds

See list on page 7.

The Community Care Legal Advice Service is funded by the four health and social services boards.

An advice line operates from the Law Centre's Belfast and Western area offices between 9.30 am and 1.00 pm daily. The telephone number for Belfast is 028 9024 4401. For Western area office telephone 028 7126 2433.

Note: Although every effort is made to ensure the information on these pages is accurate and up-to-date, Law Centre (NI) cannot be held liable for any inaccuracies and their consequences. The information should not be treated as a complete and authoritative statement of the law.

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Appendix 2

Entitlement to homeless assistance and benefits

Status	Conditions of eligibility
<p>EEA nationals and family members</p>	<p>Eligible if:</p> <ul style="list-style-type: none"> ■ they are currently in paid work in the UK; ■ they are self-employed in the UK (including a person who is temporarily unable to work due to sickness or injury); ■ they were previously working in the UK but have retained their worker status whilst temporarily out of work; ■ they are a retired worker who has acquired a right of permanent residence; <p>If they are economically inactive (including students) and do not fall into any of the categories but are self-sufficient, habitually resident and not considered to be an unreasonable burden on the state, they may be able to claim.</p>
<p>A8 nationals and family members</p> <p>Czech Republic Estonia Hungary Latvia Lithuania Poland Slovakia Slovenia</p>	<p>Eligible if:</p> <ul style="list-style-type: none"> ■ they are currently working and have previously worked in the UK for an uninterrupted period of at least twelve months whilst on the worker registration scheme; or ■ they are self-employed in the UK (including a person who is temporarily unable to work due to sickness or injury); or ■ they are currently working whilst on worker registration scheme or have applied to go on it within the first 30 days of starting their job; or ■ they have completed an uninterrupted twelve month period of work in the UK whilst on the worker registration scheme; and although not now working have acquired some other right to reside and are habitually resident; ■ they have indefinite leave to remain in the UK which was granted before 01/05/04, and they are habitually resident in the common travel area.
<p>A2 nationals and family members</p> <p>Bulgaria Romania</p>	<p>Eligible if:</p> <ul style="list-style-type: none"> ■ they are a person who is currently self-employed in the UK; ■ they are a person who is working, is subject to worker authorisation, has a worker authorisation document and who is fulfilling the conditions set out in that document; ■ they are a person who is exempt from worker authorisation (including a person who has completed twelve months authorised work) and: <ol style="list-style-type: none"> 1. is habitually resident in the common travel area and has a right to reside in the UK; and 2. now has some right to reside in the UK (eg as a worker or former worker).

Note 1: Non EEA nationals including sponsored immigrants

Most nationals from other countries not in the EEA are subject to immigration control and require 'leave' to enter the UK. Most applicants who are granted limited leave (ie for a fixed period) will be subject to a 'no recourse to public funds' condition (a fact that will show in their passport) and not be entitled to assistance unless they have indefinite leave to remain and are habitually resident and not subject to a sponsorship agreement or they have taken residency in the UK for a continuous period of five years.

Note 2: Status of family members

It is important to check the status of family members as an individual may be able to access rights via a family member.

Appendix 3

Entitlement to trust services

Status	Trust's powers
EEA, A8, A2 nationals if not entitled to benefits as set out in Appendix 3 and destitute	Trusts must comply with the Human Rights Act 1998 and are able to exercise their powers, for example to provide accommodation and subsistence in order to avoid a breach of human rights.
Non EEA nationals if not entitled to benefits as set out in Appendix 3, note 1, and destitute	Trusts must comply with the Human Rights Act 1998 and are able to exercise their powers, for example to provide accommodation and subsistence in order to avoid a breach of human rights.

Note: Trusts are always able to exercise powers to provide services to children, irrespective of the status of their parents.

Appendix 4

Public funds

Public funds include a range of income related benefits, together with housing and homelessness support. The full list is as follows:

- **Income based Jobseeker's Allowance**
- **Income Support**
- **Child Tax Credit**
- **Working Tax Credit**
- **a Social Fund payment**
- **Child Benefit**
- **Housing Benefit**
- **State Pension Credit**
- **Attendance Allowance**
- **Severe Disablement Allowance**
- **Carer's Allowance**
- **Disability Living Allowance**
- **NIHE housing**
- **Homelessness assistance**
- **Council Tax Benefit**

Other benefits sometimes thought of as public funds are not considered to be public funds in immigration law. Only those listed above are public funds in immigration law. This means, for example, that the use of the NHS or schools is not use of public funds.