



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **SUBMISSION OF EVIDENCE TO THE UK BORDER AGENCY REGARDING THE IMPACT OF THE WORKER REGISTRATION SCHEME, 10 MARCH 2009**

### **Summary**

The Worker Registration Scheme, a tool for monitoring inward migration from the new accession states, was introduced in 2004 and is due to end on 31 April 2009 unless the UK government can argue that there are "*serious disturbances to the labour market*". Drawing from its current investigative work on 'no recourse to public funds' the Commission have taken the opportunity to submit evidence to the UK Border Agency (UKBA) in advance of the government's decision on whether or not to extend the Worker Registration Scheme (WRS) beyond 31 April 2009.

The evidence submission adopts a two tiered approach the first of which focuses on the human rights implications for vulnerable groups of the scheme and recommends that it be discontinued. The second part of the submission provides detailed recommendations in the event that the scheme is extended against the advice of the Commission. The recommendations emphasise the need for flexibility in the administration of the scheme to allow people in crisis to access essential services. Other recommendations highlight the necessity of widely disseminated comprehensive information for workers and employers and a reconsideration of the burdensome registration fee.

The government is due to make an announcement at the end of March on whether or not to extend the scheme for up to a further two years.

## **Recommendations**

**Main recommendation:** The Commission recommends that the Workers Registration Scheme is discontinued in its entirety.

**Further Recommendations:** In the event that the scheme is continued, the Commission recommends the following:

1. The government's administration of the scheme should consider compassionate grounds to allow those people at risk of destitution to access support.
2. The government must allow victims of domestic violence access to the services they desperately need to ensure their protection and safety.
3. The government should carefully review existing interagency information sharing protocols to prevent access to support being denied.
4. The government should ensure that all employers are clearly aware of their obligations under the scheme and are in a position to assist their employees with the process.
5. The government should effectively make use of available sanctions for those employers who ignore their obligations under the scheme and seek to exploit their employees.
6. Registration of a change of employment should not be a requirement of the Worker Registration Scheme.
7. The government must lower the fee attributed to the Workers Registration Scheme with a view to phasing out the fee in line with the end of the scheme.
8. The government should take all necessary measures to ensure that guides for migrant workers, outlining their rights, can be reproduced and disseminated, at all appropriate points throughout the UK, for workers, voluntary organisations, employers and government service providers.
9. The government should ensure that information is available to migrants before they arrive in the UK by arranging for the dissemination of guides in co-operation with the countries of origin.

## Introduction

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes this opportunity to submit evidence to the UK Border Agency (UKBA) in advance of the government's decision on whether or not to extend the Worker Registration Scheme (WRS) beyond 31 April 2009. The Commission understands that the UKBA will receive evidence from the Migration Advisory Committee and the Migration Impacts Forum, which will outline the impact of A8 migration on the UK labour market and the potential implications of removal of the scheme. As a statutory body whose remit includes advising government on legislative and other measures which ought to be taken to protect human rights, the Commission is also mandated to give evidence and views its role as equally important in this regard.
3. The Commission is currently engaged in an investigation into homelessness for people with no or limited recourse to public funds. As part of this investigation, the Commission has considered, among other matters, the circumstances of individuals who are excluded from accessing homeless services as a direct result of the requirements of the Worker Registration Scheme. The Commission plans to publish a full report of its investigation findings in summer 2009. In the meantime, the Commission will use its knowledge, gained from this primary investigative work, to inform its submission of evidence to UKBA.

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<sup>1</sup> Northern Ireland Act 1998, s.69 (1).

<sup>2</sup> *Ibid*, s.69(3).

<sup>3</sup> *Ibid*, s.69(4).

<sup>4</sup> *Ibid*, s.69(6).

4. At the outset, the Commission notes that the concerns raised in this submission regarding exclusion from homelessness services and social security benefits also apply to other non-UK nationals as well as nationals from the A8 accession states. Nevertheless, given that the submission of evidence relates directly to the operation of the WRS, the Commission confines its comments to the impacts of exclusion from services on individuals from the A8 states.

## **WRS as a regulatory mechanism**

5. The Commission recognises the right of the State to regulate migration in a way which is compatible with human rights. If a mechanism, such as the Worker Registration Scheme, has the potential to engage or interfere with certain human rights, the government must demonstrate that this interference is necessary, proportionate, in pursuance of a legitimate aim, and adequately prescribed by law. However, the Commission is concerned that the Worker Registration Scheme is disproportionate as a regulatory mechanism because the consequences of failure to register may result in grave interference with fundamental human rights. In addition, available information would suggest that the scheme is unnecessary.
6. The need for and aims of the scheme are set out in the government's most recent WRS monitoring report, "*The UK Government put in place transitional measures to regulate A8 nationals' access to the labour market (via the Worker Registration Scheme) and to restrict access to benefits*".<sup>5</sup> In terms of the first aim, to regulate access to the labour market, the Commission notes that the government has already had 5 years since the introduction of the scheme in which to fulfil this aim. It is therefore difficult to understand how further monitoring is required. Moreover, successive Home Office reports have cast doubt on the effectiveness of the WRS as a labour market monitoring tool. The latest Home Office monitoring report states that the figures generated by the WRS represent only:

[...] a gross (cumulative) figure for the number of workers applying to the Worker Registration Scheme. The figures are

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<sup>5</sup> UK Borders Agency (2008) *Accession Monitoring Report: May 2004 – September 2008*, A joint online report between UK Borders Agency, Department for Work and Pensions, HM Revenue and Customs, and Communities and Local Government at p. 1.

not current: an individual who has registered to work and who leaves employment is not required to de-register, so some of those counted will have left the employment for which they registered and indeed some are likely to have left the UK.<sup>6</sup>

This suggests that the scheme is only partially effective in pursuance of its monitoring aim. Consequently, the Commission suggests that it is inappropriate to continue with a scheme that has the potential to result in considerable suffering and hardship when it delivers, at best, limited information in terms of monitoring.

7. For the second aim, the government states that the WRS will restrict access to benefits. In this way, it is portrayed as a mechanism to prevent the financial consequences of reliance on benefits. In addition to the potential human rights implications, the Commission suggests that in practice the scheme does not achieve this aim. Instead, it appears that the WRS merely shifts the financial consequences associated with access to benefits from social security and housing departments onto other agencies. During the Commission's investigation, it was apparent that social services or voluntary sector agencies were often relied upon to assist individuals disentitled to benefits and homelessness support because of the WRS. For voluntary organisations, the financial consequences are considerable. In most cases, they must rely on private donations or reserve funds because they risk financial penalties if public funding is used to help non-UK nationals who are ineligible for benefits and housing support. Taking full account of the role of social services and the voluntary sector, the Commission submits that, while the WRS restricts access to benefits, it does not really avoid the financial consequences that would result if access to benefits was allowed. The Commission proposes that the financial impact that does exist would be better managed if people were permitted to access the more visible systems of state housing and social security benefits.

## **Human Rights Instruments**

8. The Worker Registration Scheme is due to expire on 31 April 2009. However, the government may extend the WRS for a further period of 2 years if there are "serious disturbances to the labour market or a serious threat thereof".<sup>7</sup> In addition,

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<sup>6</sup> As above, p. 2

<sup>7</sup> The Accession Treaty 2003: The Accession (Immigration and Workers) Regulations 2004.

the Commission suggests that the government should apply a second test when deciding to remove or extend the WRS, that is, one which tests whether the scheme is compatible with the government's obligation to protect human rights.

9. In making this submission of evidence to UKBA, the Commission wishes to highlight the government's responsibilities under domestic and international human rights instruments, which are particularly relevant to the practical impacts of the Worker Registration Scheme. The Commission emphasises that human rights apply to everyone and are not dependent upon nationality or citizenship. Although the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) contains human rights provisions, some of which apply universally and some others to citizens, the UN makes clear that any differential treatment between citizens and non-citizens constitutes discrimination unless it is proportional and pursuant to a legitimate Convention aim.<sup>8</sup> In addition, the UN recommends that State Parties:

Review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance with the Convention, in particular regarding the effective enjoyment of the rights mentioned in Article 5, without discrimination<sup>9</sup>

Article 5 of the ICERD requires State Parties to prohibit and to eliminate racial discrimination and to guarantee the right of everyone to equality before the law, in particular in the enjoyment of various civil, political, economic, social and cultural rights as specified in Article 5 (a) to (e). The Commission is deeply concerned that the WRS has the potential to preclude enjoyment of these rights without discrimination, especially rights to housing and social security, and that this differential treatment has not been shown to be proportional or pursuant to a legitimate Convention aim. In addition, the Commission reminds the government of the following human rights provisions, which are guaranteed to everyone independent of citizenship and nationality:

- The European Convention on Human Rights (ECHR), in particular: Article 2 (right to life); Article 3 (freedom from inhuman, degrading treatment and torture); Article 5 (right to liberty); Article 8 (right to private and

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<sup>8</sup> General Recommendation No. 30 (General Comments): Discrimination against non-citizens, Office of the High Commissioner for Human Rights, 1 October 2004.

<sup>9</sup> As above, paragraph 6.

- family life); and Article 14 (non-discrimination).
  - The International Covenant on Economic, Social and Cultural Rights (CESCR), in particular: Article 1 (realisation of, and non-discrimination in respect of, economic, social and cultural rights); Article 9 (the right to social security and social assistance); and Article 11 (right to an adequate standard of living, including food, clothing and housing).<sup>10</sup>
  - The European Social Charter (ESC), in particular: Article 13 (right to social and medical assistance)<sup>11</sup>; Article 16 (right of the family to social, legal, and economic protection); and Article 17 (right of mothers and children to social and economic protection).
  - The UN Convention on the Rights of the Child (CRC), in particular; Article 3 (best interests principle); Article 16, (right to private and family life); Article 18 (appropriate assistance to parents for the upbringing of the child); and Article 27 (right of the child to an adequate standard of living and measures to assist parents).
10. The Commission also draws attention to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Although the UK government has not yet ratified this Convention, it contains internationally accepted standards, establishing basic norms to ensure protection of migrant worker rights. Article 43 of the Convention requires that migrant workers enjoy equal treatment in respect of access to housing, an entitlement which at present the Worker Registration Scheme prevents.

## **Human Rights Impact of the WRS**

11. The Commission is seriously concerned that the Worker Registration Scheme has the potential to result in breach of human rights provisions particularly for vulnerable groups. Indeed, from its investigations, the Commission is aware of instances where this may already have occurred. Drawing on its primary investigative work, the Commission presents the following evidence regarding the human rights impact of the WRS and submits that, from a human rights perspective, the

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<sup>10</sup> Article 2 (3) CESCR contains a concession in relation to non-citizens for developing nations only, which does not apply to the UK.

<sup>11</sup> Article 13 (1) to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.

Worker Registration Scheme should not be extended.

12. *Right to life*: The Worker Registration Scheme prevents access to essential services such as homelessness assistance and welfare benefits for individuals out of work who have not completed a continuous 12 month period of registered work. In extreme cases, exclusion from services in this way results in serious threat to life, particularly where the individual concerned is homeless and vulnerable. Article 2 of the ECHR (right to life) does not only require the State to refrain from causing unlawful death, it may also impose positive obligations:

[...] the Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.<sup>12</sup>

Therefore, while a general right to housing and social security assistance cannot be spelled out in the meaning of Article 2 of the ECHR (right to life); there are still circumstances where the State must intervene to ensure protection of the right to life. The European Court of Human Rights (ECtHR) has not yet decided a case regarding access to homelessness and social security services for foreign nationals. Nevertheless, case law in other areas has established the general principle of state responsibility under Article 2 of the ECHR. State responsibility exists if the State is responsible (whether by act or omission) for the risk to life or, if the State is not directly responsible, if it knows, or ought to know, about a real and immediate risk to life.<sup>13</sup>

13. The Commission submits that the WRS may result in violation of the right to life where a homeless and vulnerable person, presenting to state authorities (whether in person or through a voluntary agency), is refused assistance solely because they do not meet the terms of the scheme. In this case, the State, having become aware of the person's vulnerability and the fact that they are homeless, may have a duty of care to respond. From its primary investigative work, the Commission can state categorically that there are instances in Northern Ireland where homeless people have been declined

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<sup>12</sup> *Öneryıldız v. Turkey* (Application no. 48939/99), 30 November 2004, paragraph 71.

<sup>13</sup> See *Osman v United Kingdom* (1998) Case No 87/1997/871/1083, 5 November 1998.

assistance due to the WRS. Individuals without any form of accommodation, including those suffering from ill-health, physical and mental disability, and people with dependent children are refused homelessness assistance and/or welfare benefits because they have not been registered (or have not been registered for a continuous 12 month period) on the scheme.

14. Although in some instances a person may receive help from social services, (in Northern Ireland under Article 15 of the Health and Personal Social Services (NI) Order 1972 and in England and Wales under Section 21 of the National Assistance Act 1948), there is no clear guidance on when social services assistance should be provided. For instance, Commission investigators were regularly informed that unless a person fits within a specific category of vulnerability corresponding to existing social services departments, they will not receive help. At present, it seems that social services departments in Northern Ireland are set up to respond only to those with children, with mental or physical disability (including learning disability), with sensory impairment, and older people. This means that in practice, there is no real safety net for individuals from the A8 states who are homeless unless they can demonstrate these very specific vulnerabilities.
15. The Commission recognises that from a housing perspective, not all homeless people are entitled to homelessness assistance. Therefore, housing legislation at present provides that in order to qualify for assistance, homeless people must also establish priority need. However, if the WRS did not exist, a homeless person without priority need within the meaning of housing legislation and unable to demonstrate social services related vulnerabilities, would still have a potential route to support. In the absence of the requirement to register on the WRS, they would have access to benefits, such as Job Seekers Allowance or Income Support, which would offer basic subsistence and, with housing benefit, the means to cover rent. Bearing in mind the government's obligations under Article 2 of ECHR (right to life) the Commission submits that individuals from the A8 states should be entitled to access services regardless of their WRS status in the same way as other individuals travelling to the UK from the EU.
16. *Freedom from inhuman and degrading treatment:* Prevention of access to services for homeless people potentially engages

Article 3 of the ECHR (prevention from inhuman, degrading treatment and torture), where the treatment in question causes a level of suffering that is inhuman and degrading or, in more serious cases, torturous. The ECtHR sets a high threshold in order to establish a violation of the states obligation to ensure against inhuman and degrading treatment. However, the House of Lords have held that in certain circumstances the failure to provide access to support services for destitute asylum seekers constitutes a breach of Article 3:

As in all Article 3 cases, the treatment, to be proscribed, must achieve a minimum standard of severity, and I would accept that in a context such as this, not involving the deliberate infliction of pain or suffering, the threshold is a high one. A general public duty to house the homeless or provide for the destitute cannot be spelled out of Article 3. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life.<sup>14</sup>

Although referring to the refusal of support for asylum seekers under Section 55 of the Nationality, Immigration and Asylum Act 2002, the logical extension of Lord Bingham's judgement is that in certain circumstances, irrespective of legislation barring access to public funds, the State may be required to intervene to avoid a breach of Article 3 rights. However, as with Article 2 of the ECHR (right to life), the ECtHR has established that there must be some element of responsibility on behalf of the State to engage Article 3. In other words, in this type of case the state must bear some liability for the individual's destitution.<sup>15</sup> Again, the Commission is of the view that destitution resulting from legislative prohibitions, has the potential to constitute treatment for which the State is responsible. In so far as failure to register on the WRS can result in rough sleeping and a state of destitution likely to engage Article 3 of the ECHR, the Commission again reiterates that the WRS should be discontinued.

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<sup>14</sup> Per Bingham, L.J. at paragraph 7 in, *Regina v. Secretary of State for the Home Department (Appellant) ex parte Adam; Regina v. Secretary of State for the Home Department (Appellant) ex parte Limbuela; Regina v. Secretary of State for the Home Department (Appellant) ex parte Tesema (Conjoined Appeals)* [2005] UKHL 66.

<sup>15</sup> O'Conneide (2008) 'A modest proposal: destitution, state responsibility and the European Convention on Human Rights', 5 *European Human Rights Law Review* 583-605.

17. *Right to liberty*: Article 5 of the ECHR guarantees the right to liberty, except where deprivation of liberty occurs for specific purposes, as listed in the Convention in which case detention must be in accordance with appropriate procedures proscribed in law. Article 5 (1) (e) permits deprivation of liberty for, *inter alia*, people suffering from mental ill health. During the fieldwork for the Commission's investigation, members of the voluntary sector and staff from state agencies communicated that, at times, access to services for certain categories of non-UK nationals, including nationals from the A8 states, could only be achieved via admission to hospital on mental health grounds. It is concerning that lack of conventional housing assistance would prompt unnecessary hospitalisation in this way. In addition, the Commission is concerned about, and encountered a case of, delayed discharge from hospital following detention under mental health legislation due to a lack of entitlement to accommodation and social security benefits. Homeless people are at particular risk of mental ill health as highlighted in a recent policy statement by the European Federation of National Organisations Working with the Homeless (FEANTSA):

The living conditions and social exclusion of homeless people is very stressful and the stress is undoubtedly among the primary factors that cause depression, schizophrenia, personality disorders and anxiety disorders to be common.<sup>16</sup>

The Commission is mindful that there are serious risks of additional stress associated with lack of access to services, which may cause or aggravate mental ill health. As one member of the voluntary sector stated during the Commission's investigation, "*I suspect that the destitution exasperates existing mental health problems and trauma*". In serious cases, deterioration in mental health may lead ultimately to detention under mental health legislation. However, if it is assessed that a person's health care needs could be met in the community, or could otherwise be addressed if they had access to public funds, then the Commission is concerned that the use of detention has the potential to raise issues under Article 5 of the ECHR (right to liberty).

18. *Right to private and family life*: Article 8 of the ECHR encompasses the right to respect for family, private life, and

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<sup>16</sup> European Federation of National Organisations Working with the Homeless (2005) *FEANTSA Policy Statement: Meeting the health needs of homeless people*, FEANTSA.

home. Refusal of access to homelessness services has the potential to engage Article 8 in so far as this may constitute an illegitimate interference with the applicant's private or family life. Migrants in the UK without "family" within the meaning of Article 8 can still rely on the protections of the right to private life in so far as the ECtHR has held that *"Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8"*.<sup>17</sup>

19. Whether or not Article 8 is engaged in the context of destitution will depend again upon an element of state responsibility and on a direct link existing between the circumstances alleged and the right to enjoy private and family life within the meaning of the Convention.<sup>18</sup> However, as with arguments advanced in relation to Article 2 (right to life) and Article 3 (freedom from inhuman and degrading treatment) of the ECHR, the Commission submits that state responsibility should be established once an individual presents to state agencies making the State aware of their plight.
20. Examples of the types of concerns arising under Article 8 of the ECHR (right to private and family life) include the potential for the WRS to prompt intervention from social services in support of the children of a destitute family without also supporting the parents. In this context, the Commission is concerned that the possible removal of children solely because parents are prevented from accessing public funds risks serious infringement of Article 8. In addition, that a mother has no means to support herself unless she undertakes work or remains in the family home where she may endure suffering due to an abusive partner is a denial of basic human rights, including rights under Article 8 of the ECHR. This scenario was encountered by the Commission during its investigation and is outlined in the facts of the case heard by the House of Lords in *Zalewska (AP) (Appellant) v Department for Social Development (Respondents) (Northern Ireland)*.<sup>19</sup> In that case, a female from Poland suffering

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<sup>17</sup> *Maslov v Austria* (2008) (Application no. 1638/03), 23 June 2008.

<sup>18</sup> *R (on the application of Bernard) v Enfield LBC* [2002] EWHC 2282 (Admin); for detailed consideration of this case law see O'Cinneide (above).

<sup>19</sup> [2008] UKHL 67

domestic violence was denied assistance because of failure to notify a change of employer as required by the WRS. The House of Lords held by 3:2 that the Worker Registration Scheme was not incompatible with EC law relating to the free movement of workers. Although human rights arguments were not raised, the Commission is of the view that, at the very least, in this type of situation the right to respect for private and family life is engaged.

## **Impact on vulnerable groups**

21. The Commission is concerned about, and has outlined from a human rights perspective, the detrimental impact of the Worker Registration Scheme in all cases where exclusion from homelessness assistance and social security benefits arises. However, there are particular issues that arise for people with additional vulnerabilities. Throughout its investigation the Commission was aware of heightened potential for human rights abuse in the following types of cases.
22. *Illness and disability*: People suffering ill health or physical or mental disability are particularly vulnerable. Lack of access to services raises serious risks of violation of Article 2 of the ECHR (right to life), and Article 3 of the ECHR (freedom from inhuman and degrading treatment). Article 5 of the ECHR (right to liberty) is also relevant in so far as detention or hospitalisation might be used in the absence of other forms of support or where detention is required because of deterioration in mental health due to inability to access accommodation and social security benefits when homeless.
23. *Domestic violence*: During its investigation, the Commission found that women from A8 states were often forced to make the impossible choice between staying in an abusive relationship or leaving with little or no options for support. While in some cases women with children received support from social services, women without children tended not to get this type of help. The reality of domestic violence where the woman does not fulfil the requirements of the WRS, or where her entitlements are attached to a partner, is a grave risk to her life if she stays and, if she leaves, serious threats to her rights arise due to the lack of options for housing and welfare support as engaged under Article 2 (right to life), Article 3 (freedom from inhuman and degrading treatment), and Article 8 (right to private and family life) of the ECHR. In practice, the Commission found that the rights of women in this situation were unacceptably dependent on the availability

of bed spaces within voluntary organisations and on whether or not charitable funds could be found to help. The issue of access to services was raised by the UN Committee on the Elimination of All Forms of Discrimination against Women. In its concluding observations the Committee communicated the following:

[...] the Committee urges the State party to review its 'no recourse to public funds' policy to ensure the protection of and provision of support to victims of violence.<sup>20</sup>

24. *Other threats of violence:* There are other threats of violence, interfering with the enjoyment of the right to life, which become near unavoidable if a person is denied homelessness assistance and welfare support. Therefore, the requirements of the WRS mean that people may be forced to remain in a property where they are at risk of racist intimidation. In addition, where people are 'sleeping rough' due to a lack of entitlement to services, participants in the Commission's investigation reported several incidents of racist attacks.
25. *Children and young people:* People with dependent children should never be excluded from homelessness and welfare support. Although the Commission did not come across this in practice, it was intimated that, in theory, social services could meet their responsibilities to children by placing them in local authority care. Should this ever occur, the Commission reiterates that it is unacceptable and contrary to domestic and international human rights standards if children are placed in care solely because the parents are prevented from accessing public funds. In particular, the Commission draws attention to Article 3 of the CRC (best interests principle), Article 16 of the CRC and Article 8 of the ECHR (right to private and family life), Article 18 of the CRC (appropriate assistance to parents for the upbringing of the child) and Article 27 of the CRC (right of the child to an adequate standard of living and measures to assist parents).
26. *Unregistered workers:* During the course of the Commission's investigation into homelessness and no or limited recourse to public funds investigators encountered a number of cases where people had worked for a number of months or years but had never registered on the WRS.<sup>21</sup> It is only when the

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<sup>20</sup> CEDAW/C/GBR/CO/6 18<sup>th</sup> July 2008, para 48.

<sup>21</sup> The Commission encountered these cases through review of government agency case files and communications with voluntary agencies.

people concerned encountered difficulty that they realised they had no entitlement to support. The Commission feels strongly that entitlement to homelessness and welfare support is not, and should never be, dependent on economic activity. However, it is a further injustice that people who have worked in the UK, having paid tax and national insurance contributions, are denied support because their work is not registered on the WRS. The Commission suggests that monitoring information regarding those who are working in the UK can already be obtained from existing information sources such as national insurance registration and tax records. Yet nationals from the A8 states who are working and registered for national insurance contributions and tax, are still denied access to homelessness assistance and benefits for failure to complete the WRS. The fact that nationals from the A8 states do work without registering on the WRS represents further evidence for discontinuance of the scheme.

## **Conclusion**

27. The Commission submits the above information as evidence against extension of the WRS. The Commission emphasises that, aside from the effectiveness or ineffectiveness of the scheme as a monitoring tool and, independent of the impacts of accession on the labour market, the evidence outlined here shows that from a human perspective the WRS has caused considerable and unacceptable suffering. Adhering to its obligation to respect individual human rights, as set out in domestic and international human rights instruments, the government should discontinue the Worker Registration Scheme.

**Main Recommendation: The Commission recommends that the Worker Registration Scheme is discontinued in its entirety.**

## Alterations to existing Scheme

28. Having submitted this evidence, and retaining its position against the entirety of the WRS, the Commission is mindful that the government may, contrary to their human rights obligations and the Commission's view, grant an extension of the scheme beyond 31 April 2009. If this does occur, there are alterations that *must* be made to the existing scheme in order to ensure respect for human rights. Therefore, the Commission wish to make a number of recommendations to address problems regarding the workings of the existing scheme and urges the government that, if it is minded to extend, these recommendations should be taken on board with a view to phasing out the WRS as soon as possible and in any event well before the end of the next two year period.
29. *Access to services:* As outlined in the earlier arguments against the extension of the Workers Registration Scheme the Commission is gravely concerned about the denial of essential services to A8 workers. Failure to complete the scheme for whatever reason can result in people being denied access to basic services. A number of circumstances can lead to destitution among any population including loss of employment and inability to work due to injury, illness, disability, caring responsibilities or relationship breakdown. The difference between destitution suffered by a UK national and an A8 national (and indeed many other non-UK nationals) is the ability to access potentially life saving services including benefits to ensure the provision of food and accommodation. The investigation looked specifically at the issue of homelessness and identified a number of cases where people were left with no shelter simply because of a failure to complete their twelve month registration. Individuals and families are being forced to live rough or move from temporary accommodation to temporary accommodation with no available support from the relevant government agencies.
30. In addition to those people denied access to services for failure to register on the scheme, the Commission came across, and was informed about instances where, people had registered but either failed to complete twelve months or had a break in employment exceeding 30 days.<sup>22</sup> Unfortunately the Workers Registration Scheme allows no flexibility to workers in times of crisis. The Commission received

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<sup>22</sup> The Commission received information regarding these types of cases from voluntary agencies. In addition, the Commission came across this information directly from a review of case files held by government agencies.

information about women, who had registered but became pregnant and given birth, having to restart the scheme<sup>23</sup> and others, who had to return to their home country to undertake caring responsibilities or deal with the death of a family member, also having to recommence the scheme on their return. In addition, the Commission was informed about denial of access to services for workers who had become ill and in two instances support was denied even though the individual had suffered work related injuries.<sup>24</sup> The Commission remains gravely concerned at the denial of access to appropriate services for A8 workers and urge the government, as a minimum, to apply flexibility in the administration of the scheme on compassionate grounds to allow those people at risk of destitution to access support.

**Recommendation: The government's administration of the scheme should consider compassionate grounds to allow those people at risk of destitution to access support.**

31. *Domestic Violence:* As indicated above, a major theme of the current investigation is the issue of homelessness among people with no or limited access to public funds resulting from domestic violence. There are several issues about the Workers Registration Scheme and domestic violence which concern the Commission. In order to access support services, including accommodation and benefits, a victim of domestic violence must have either themselves completed the Workers Registration Scheme or be family member of someone who has. The investigation worked directly with victims of domestic violence and support agencies and found that there were victims who had not met WRS requirements either through not having worked themselves or as a result of child caring responsibilities. The Commission found that those women were entirely dependent on limited charitable support and had no access to government assistance.
32. In the case of women whose spouses were registered there were numerous barriers to accessing services. In many cases the victim is dependent on the abusive spouse for information which further locates the balance of power on the side of the abuser. The Commission was informed about women and/or

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<sup>23</sup> The Workers Registration Scheme allows women on maternity leave to continue the scheme provided that their employment is maintained however the investigation received information about instances where women were sacked during pregnancy.

<sup>24</sup> Information regarding this case was communicated to the Commission by a voluntary organisation and through a review of case files.

their advocates who attempted to confirm their partner's status via the Home Office but were apparently denied information. It appears that there is currently no mechanism for government agencies to confirm entitlement to services through the Home Office due to data protection regulations. The consequences of not being able to establish status means that a number of victims are being denied access to benefits and services to which they are entitled with the result that community and voluntary organisations are struggling to absorb the costs of supporting victims. The Commission is deeply aware of the implications of domestic violence and the inherent risk to life. It urges the government to allow victims of domestic violence access to the services they desperately need to ensure their protection and safety. The Commission also asks that the government to carefully review existing interagency information sharing protocols to prevent access to support being denied.

**Recommendation: The government must allow victims of domestic violence access to the services they desperately need to ensure their protection and safety.**

**Recommendation: The government should carefully review existing interagency information sharing protocols to prevent access to support being denied.**

33. *Sanctions on Employers:* Currently the onus of registering with the scheme lies entirely with employees and it is the employees that face the consequences of failing to register. The investigation encountered three main forms of employment - the recruitment and employment of A8 workers through employment agencies; the employment of A8 workers in large, usually manufacturing, businesses; and the employment of workers in smaller family run businesses e.g. building, agricultural, and catering. As previously outlined, some workers had no knowledge of the scheme or were not aware of the obligation to re-register. In some instances they were misinformed by employers and, in one case, the Commission met with an A8 national who had been trafficked and subjected to economic exploitation. The Commission is concerned that there appears to be a gap in communication between the Home Office and employers about the scheme and subsequently between employers and employees. This is in spite of the fact that it is an offence under section 9 of The Accession (Immigration and Worker Registration) Regulations

2004 to employ an unregistered worker.<sup>25</sup> The offence carries a maximum penalty not exceeding £5,000.

34. Whilst the investigation examined numerous cases of services being denied as a result of failure to complete the scheme, at the time of writing no evidence was uncovered of employers being sanctioned in Northern Ireland for the employment of unregistered A8 workers. The Commission urge the government to ensure that all employers are clearly aware of their obligations under the scheme and are in a position to assist their employees with the registration process. The Commission also reminds the government of the sanctions that are available and recommends that these are more effectively used for employers who blatantly ignore their obligations under the scheme and seek to exploit their employees.

**Recommendation: The government should ensure that all employers are clearly aware of their obligations under the scheme and are in a position to assist their employees with the process.**

**Recommendation: The government should effectively make use of available sanctions for those employers who ignore their obligations under the scheme and seek to exploit their employees.**

35. *Re-registration*: In addition to workers who were unaware of the schemes existence, the Commission received information about instances where the individual had failed to register a change of employment. Failure to register a new employment has the same effect as no registration does, in that workers are denied access to benefits and services. The Commission feels that the denial of essential services is wholly disproportionate to the governments desire to monitor immigration. The Commission's views were confirmed by Baroness Hale and Lord Neuberger in their dissenting opinions in the recent House of Lords case *Zalewska v Department for Social Development* [2008] UKHL 67. The case considered the implications of a failure to register additional employments and the resulting denial of services. Baroness Hale remarked that:

It is even more difficult to see how denial of benefits can be a *necessary* means of achieving the monitoring aim. The

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<sup>25</sup> The Commission is also aware that in some instances a case may be pursued under the Gangmasters (Licensing) Act 2004 although this does not relate exclusively to the Worker Registration Scheme.

consequences for the worker's right to freedom of movement are severe. She was allowed to come and to work here for 12 months. But she has been denied what she would otherwise be entitled to, having worked for so long. And by that stage the benefits for the monitoring scheme scarcely exist, but could in any event be achieved by allowing retrospective registration... The consequences of the sanction are particularly severe in a case such as this, where the claimant has registered once. She has therefore been counted for the main purpose of the scheme, which is to count heads rather than jobs (at paragraph 57).

Echoing her remarks Lord Neuberger held:

In a nutshell, as I see it, what the Government has done here is to open up the labour market relatively generously with one hand, while, by imposing an unnecessary and harsh sanction for failing to comply with a purely procedural requirement, it has, in many cases, severely and arbitrarily undermined that generosity with the other hand (at paragraph 69).

The Commission is of the firm belief that the Government's desire to monitor economic migration should be administered in a manner proportionate to the rights and needs of migrant workers. As such, re-registration should not be a requirement of the scheme.

**Recommendation: Registration of a change of employment should not be a requirement of the Worker Registration Scheme.**

36. *Reconsideration of the fee:* When the Worker Registration Scheme was introduced in 2004 Regulation 8(4) (a) of The Accession State Worker Registration Scheme required an application from an unregistered worker to be accompanied by a £50 fee. This fee was increased to £70 from 1 October 2005 by the Accession (Immigration and Worker Registration) (Amendment) Regulations 2005. As of 2 April 2007 the fee was increased to £90. In the explanatory paper accompanying the last increase in fees (No. 928 (2007)) the Government stated that, even at the increased rate, the fee was below cost recovery levels and therefore justifiable. The government went on to say that it did not want the fee to deter workers from applying to register.
37. The Commission is concerned that the extent of the fee may be deterring people from registering. The table below demonstrates how the £90 fee compares to the monthly minimum wage of individuals from A8 states.

Table 1. Proportionality of Application fee

COUNTRY	Nat Min Wage	UK Stg Equiv	% monthly wage	Days work
U. Kingdom	993.20 GBP	993.20	9.06%	2.70
Slovenia	566.53 euros	509.778	17.65%	5.29
Slovakia	295.49 euros	265.889	33.84%	10.15
Poland	1,276 zlotys	253.028	35.56%	10.66
Czech Rep.	8,000 koruny	252.688	35.61%	10.68
Estonia	4,350 kroons	250.067	35.99%	10.79
Latvia	180 lats	224.26	40.13%	12.03
Hungary	71,500 forints	217.469	41.38%	12.41
Lithuania	800 litai	202.88	44.36%	13.30

\* figures based on Federation of European Employers review of minimum wage rates

\*\* national minimum wage for full time adult employees (age 23+) per 30 day month

\*\*\* exchange rates based on xe.com accessed 11/02/09 16:35.

The table demonstrates that the current £90 fee equates to an average of 35.565% or 9.77 days of an A8 workers minimum monthly salary. As previously outlined, A8 migrant workers may be unaware of the scheme prior to arriving in the UK and as such will not have budgeted for it. There are those who may not have been in full time employment in their home state and are leaving a situation of poverty in search of a better life abroad. Consideration should also be given to the cost implications to families where a couple both register for work. In some instances people may be making a choice between meeting their basic needs or paying the registration fee while they wait for their first pay cheque to clear. The investigation worked with a number of community/voluntary groups as well as with A8 workers. Those who were aware of the scheme were asked about the cost implications of the fee and many expressed that it was burdensome and was a deterrent to registration. The Commission strongly recommends that government reviews the fee attributed to the Workers Registration Scheme in favour of a lower fee with a view to phasing out the fee entirely in line with the end of the scheme.

**Recommendation: The government must lower the fee attributed to the Workers Registration Scheme with a view to phasing out the fee in line with the end of the scheme.**

38. *Accessibility and availability of information:* The most common problem which investigators encountered was a reported lack of comprehensive and accessible information for workers and for service providers about the Worker Registration Scheme. All too often it seemed that workers were only learning about the scheme when they faced crisis and were informed that they were not eligible for assistance. When the scheme was initially launched there was a dearth of information, which the Commission and other organisations subsequently sought to address. The Commission acknowledges the fact that the government have funded the production of comprehensive migrant worker guides for Northern Ireland in a number of languages.<sup>26</sup> However, it remains apparent that whilst information has been produced it has not always been made available at the appropriate levels within government agencies. The investigation also found that difficulties in accessing information have resulted in a lack of awareness among many migrant workers about their rights and obligations under the scheme. The Commission strongly recommends that the government take all necessary measures to ensure that guides can be reproduced and disseminated, at all appropriate points throughout the UK, for workers, voluntary organisations, employers and government service providers. In addition, the government should ensure that information is available to migrants before they arrive in the UK by arranging for the dissemination of guides in co-operation with the countries of origin.

**Recommendation: The government should take all necessary measures to ensure that guides for migrant workers, outlining their rights, can be reproduced and disseminated, at all appropriate points throughout the UK, for workers, voluntary organisations, employers and government service providers.**

**Recommendation: The government should ensure that information is available to migrants before they arrive in the UK by arranging for the dissemination of guides in co-operation with the countries of origin.**

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<sup>26</sup> Funding was received from the Office of First Minister and deputy First Minister (See Animate, Law Centre (NI) & the Northern Ireland Human Rights Commission (2008) *Your Rights in Northern Ireland: A guide for migrant workers from: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, and Slovenia*, 2<sup>nd</sup> Ed, <http://tinyurl.com/alfuc4>

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Please direct any further queries to:  
Roisin Devlin or Sorcha McKenna (Investigations Workers)

Northern Ireland Human Rights Commission  
Temple Court, 39 North Street  
Belfast BT1 1NA  
Tel: (028) 9024 3987  
Fax: (028) 9024 7844  
Textphone: (028) 9024 9066  
SMS Text: 07786 202075  
Email: [information@nihrc.org](mailto:information@nihrc.org)  
Website: [www.nihrc.org](http://www.nihrc.org)