# UK Response to the Report on the Free Movement of Workers in the United Kingdom in 2007

Thank you for your e-mail of 22 December 2008 attaching the report on the Free Movement of Workers in the United Kingdom in 2007 and the consolidated European report on the Free Movement of Workers in Europe in 2007.

The United Kingdom remains, in principle, committed to facilitating the freedom of movement of workers in accordance with the EU Directive. The right of free movement of people is one of the main achievements of the European Union. Over 1.5 million UK nationals now live in other EU countries. Many more travel to work in EU countries. 2.3% of the UK's population are EEA nationals and we have benefited from their talents, not least those from the New Member States.

We note that the UK report has been written for the European Commission by independent experts who express personal views that do not necessarily reflect the views of the Commission.

p.16. We also note that there is factual inaccuracy on page 16 of the consolidated European report in respect of UK practice regarding automatic deportation of EEA nationals which erroneously states: "*However, the UK Borders Act, which came in to force in October 2007, contains a provision on the automatic deportation of foreign criminals* ***(including EU/EEA citizens****)* - emphasis added in bold text*. This provision has not yet been brought into force but may be contrary to Community law.* " This should be compared with the text of the UK Report on page 12 which states "*section 28 of the Act which contains provisions on automatic deportation of foreign criminals, is not yet in force*". The UK position is that EEA nationals are not considered for automatic deportation and are statutorily excluded from such provisions as per section 33 of the Act. The automatic deportation provisions are in section 32 of the Act rather than section 28 as is cited in the UK report.

P. 41-42. The rapporteurs in the UK report make reference to the United Kingdom's reliance on the ECJ case of Akrich in applying the condition of prior lawful residence in another Member State and the application of the requirements of the Immigration Rules to non-EEA family members of EU citizens coming from outside the EU (pages 41-42). The UK considers that it was compliant with the Akrich ECJ judgment as the judgment was interpreted by its domestic courts in 2007.

P. 42. The UK Report refers on page 42 to the Court of Appeal hearing of *KG (Sri Lanka) and AK (Sri Lanka)* heard on 20 December 2007. The UK Border Agency's interpretation was upheld by the Court in its determination promulgated on 25 January 2008 and a copy of the judgment was forwarded to the Commission with the UK authorities' comments on the 2006 UK report. The House of Lords subsequently refused both appellants leave to petition to the House of Lords against the Court of Appeal's decision in July 2008.

P. 23-24. The UK Report refers in pages 23-24 to the *Zalewska v Department for Social Development* appeal which was heard and dismissed by the Court of Appeal. Ms Zalewska's subsequent appeal to the House of Lords was dismissed by the House of Lords on 13 November 2008. The Lords agreed that the purpose of the Workers Registration Scheme was appropriate and proportionate to monitor the numbers of A8 nationals coming to the UK and which fields they are working in.

P. 43. The rapporteurs have expressed concern on page 43 of the UK report that ECJ judgments in Eind and Jia have left the law in a state of uncertainty that is unhelpful and open to divergent interpretation by National courts. The rapporteurs add this could in turn lead to a potential source of inconsistent and divergent practice in different Member States. The UK is happy to talk to the Commission to resolve any problems over interpretation of the Directive and welcomes discussions with the Commission and other Member States in the expert groups on clarifying the interpretation of the Directive.

In respect of transitional arrangements, since 2004 it has been the UK Government's policy that low-skilled migration schemes for non-EU nationals would be phased out given the availability of workers from an expanded EU labour force to fill vacancies at lower skill levels. This policy was reinforced on 18 December 2008 when the UK Government announced that those restrictions would continue, subject to a further review later in 2009.

The UK Government took this decision on the advice of the Migration Advisory Committee, taking into account the needs of our labour market, the impact of the A10 accession and the positions adopted by other EU countries. The Government has also made the following decisions:

- The quota for the Seasonal Agricultural Scheme (SAWS) will increase from 16,250 to 21,250 from 2009. Applications for SAWS will still only be accepted from Romania and Bulgaria.
- The Sector Based Scheme (SBS) for food processing quota will remain at 3,500.

Skilled workers from Romania and Bulgaria can continue to come to the UK if they meet the requirements of the UK's work permit arrangements. Other categories allowed to work in the UK include students (up to 20 hours per week and full-time in vacations) and self-employed people.

Please replace "Department of Work and Pensions" with "Department for Work and Pensions" wherever it appears in both Reports: e.g. p15 final para of the UK Report.

P16. 3. Recognition of diplomas
"The following is taken from the explanatory memorandum accompanying the Regulations:" - Please note, this is a direct lift from the explanatory note, not the explanatory memorandum.

P. 17. Final sentence refers to DCSF. This is incorrect. Please replace with DIUS (Department for Innovation, Universities & Skills).

P. 18. The DfES websites may have been correct in 2007, but DfES no longer exists.

P19. Chapter III
1. Working conditions, social and tax advantages (direct, indirect discrimination).
This appears to be unnecessarily negative. Please include the following:

Jobcentre Plus has strengthened its ties to the UK private recruitment industry through the signing of a Memorandum of Understanding with the Recruitment and Employment Confederation on 17th November 2008. The two organisations have committed to act as champions against discrimination and challenge unfair employment policies within the industry.

The Department for Work and Pensions and Jobcentreplus co-operate with Government enforcement agencies to route out malpractice, however this is the responsibility of the Gangmasters Licensing Authority http://www.gla.gov.uk/ and Employment Agency Standards Inspectorate (part of BERR) rather than DWP.(http://www.berr.gov.uk/whatwedo/employment/employment-agencies/)

P. 43.3 of the UK Report and P. 52.3 of the EU Report refer to Working Families Tax Credits. This benefit was abolished by the Tax Credits Act (2002). This should be Working Tax Credit. People living in Ireland but working in Northern Ireland are entitled to claim Working Tax Credit.

We are grateful to the Commission for offering the opportunity to comment on the reports. We remain, of course, open to discuss areas of difference in the United Kingdom's approach with Commission colleagues.